

**STATE OF VERMONT  
DEPARTMENT OF FINANCIAL REGULATION**

**SECURITIES DIVISION**

<b>In the Matter of:</b>	)	
	)	<b>Docket No. 13-028-S</b>
<b>Registration Exemption for NRG</b>	)	
<b>Residential Solar Systems LLC</b>	)	

**ORDER**

WHEREAS, on August 16, 2013, counsel for NRG Residential Solar Systems LLC (“NRG”) sent a letter (the “No Action Letter”) to the Commissioner of the Department of Financial Regulation (the “Commissioner”) describing a pilot solar project to be owned and operated by NRG in which approximately 50 participating customers would enter into a Vermont Group Net Metering Agreement (the “Agreement”) to “license” a portion of the planned solar array and receive net metering credits to offset their electricity purchases from Green Mountain Power; and

WHEREAS, the No Action Letter asserted that the interests to be offered to customers under the Agreement do not constitute securities and that accordingly their offer and sale should not be subject to the registration requirements of the Act; and

WHEREAS, the No Action Letter requested that the Department of Financial Regulation (the “Department”) confirm that it would not take any enforcement action if NRG were to offer and sell the interests to be offered to customers under the Agreement without registering them under the Act; and

WHEREAS, under 9 V.S.A. § 5102(28)(D), a security includes an “investment contract,” defined as “an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor and a ‘common enterprise’ means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investors;” and

WHEREAS, the Commissioner is charged with the administration of the Vermont Uniform Securities Act, 9 V.S.A. chapter 150, § 5101, *et seq.*, as amended (the “Act”) under 9 V.S.A. § 5601; and

WHEREAS, for purposes of compliance with the securities registration provisions of the Act, the Commissioner finds that the interests to be offered to customers under the Agreement satisfy all the components of 9 V.S.A. § 5102(28)(D) and therefore are a “security” under the Act; and

WHEREAS, 9 V.S.A. § 5605(a)(1) provides that the Commissioner may issue orders necessary or appropriate to carry out the Act; and

WHEREAS, 9 V.S.A. § 5301 provides that “[i]t is unlawful for a person to offer or sell a security in this state unless: (1) the security is a federal covered security; (2) the security, transaction, or offer is exempted from registration under sections 5201 through 5203 of this chapter; or (3) the security is registered under this chapter;” and

WHEREAS, 9 V.S.A. § 5203 permits the Commissioner to exempt by rule adopted or order issued a security, transaction, or offer from the registration requirements of §§ 5301- 5306 of the Act if the Commissioner determines that registration is not necessary or appropriate for the protection of investors and that the exemption is consistent with the public interest and within the purposes intended by the Act; and

WHEREAS, the State of Vermont, through its policies and legislation, has demonstrated a commitment to fostering renewable energy and distributed renewable energy production; and

WHEREAS, having reviewed the Agreement and considered the contractual rights and obligations of the parties under the Agreement the Commissioner finds that it is necessary and appropriate in the public interest and for the protection of investors and is consistent with the purposes intended by the policy and provisions of the Act to exempt the interests to be offered to customers under the Agreement from the registration provisions of the Act.

**NOW, THEREFORE, IT IS ORDERED**, under the authority granted by 9 V.S.A. §§ 5203 and 5605, that the interests to be offered to customers under the Agreement shall be exempt from the registration provisions of the Act; however, the Department retains all other enforcement authority conferred by law.

This Order shall become effective upon signature. The Commissioner reserves the authority under 9 V.S.A. § 5605(a) of the Act to amend or repeal this Order.

Dated at Montpelier, Vermont this seventeenth (17<sup>th</sup>) day of August, 2013.

A handwritten signature in cursive script, reading "Susan L. Donegan", followed by a horizontal line extending to the right.

Susan L. Donegan, Commissioner  
Vermont Department of Financial Regulation