



Commonwealth of Massachusetts  
**DEPARTMENT OF HOUSING &  
COMMUNITY DEVELOPMENT**

Charles D. Baker, Governor ♦ Karyn E. Polito, Lt. Governor

## Public Housing Notice 2015-01

**To:** All Local Housing Authorities

**From:** Steven Carvalho, Associate Director  
Division of Public Housing and Rental Assistance

**Re:** Contracting for Net Metering Credits from Off-Site Solar Power Developments

**Date:** January 26, 2015

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In recent months many LHAs have been contacted by developers seeking to build large solar power sites on privately controlled land. Under the state's net metering credit program, LHAs may act as "hosts" for these solar sites, in exchange for savings on their electric bill. The savings from these deals can be substantial – typically in the range of 15% to 25% of electricity costs – so they are worthwhile to explore. The purpose of this Public Housing Notice (PHN) is to provide information and guidance to LHAs interested in these opportunities.

**PLEASE NOTE:**

1. **If your authority has already executed a net meter credit purchase agreement for your state public housing units and has not provided an executed copy of the agreement to DHCD, please forward a copy to Paul McPartland, DHCD Asset Management Coordinator, 100 Cambridge Street, 4<sup>th</sup> Floor, Boston, MA 02114.**
2. This program is not available to communities served by municipal electricity providers.
3. DHCD has not formally endorsed or disapproved any solar power developer offering net metering credit contracts. It is the responsibility of the LHA to use appropriate due diligence in selecting a contracting party, acting in compliance with the requirements of this Public Housing Notice.

**OVERVIEW OF THE NET METERING CREDIT PROGRAM:**

**What Is Net Metering?** The concept "net metering" refers to an electric meter that can not only track the electricity used, but also the electricity produced and sold back into the grid. For example, if you installed solar panels on your roof, a "net meter" can track the "net" difference between what you produce and what you use, offsetting one against the other.

**Net Metering Credits:** The Green Communities Act (GCA) allows large solar power installations to participate in net metering, without the need to be physically linked to site of the user of the electricity (as an LHA's small roof-top net metering sites are, for example). Therefore, Developers have the freedom to search a much larger region to find the most cost-effective site for a solar development. The GCA also required electric utility companies to fund significant financial incentives to encourage the development of these projects. These incentives are called net metering "credits." In the same way the electric utility may donate more efficient refrigerators to LHAs to promote required energy conservation goals, it is required by state regulations to provide these credits to help encourage renewable solar projects.

There is a cap on how many MW of solar power sites can qualify for these net meter credits, and half of this cap is set aside for projects "hosted" by "public entities," including LHAs. Developers are hurrying to get projects in the pipeline now, before the credits are all allocated, and are therefore eager to recruit public entity hosts.

**Solar Renewable Energy Certificates (SRECs):** In addition, there is a second major financial incentive available to many of these deals – Solar Renewable Energy Certificates, or SRECs. Once a solar power development is producing electricity, each megawatt hour of power generated qualifies it for an SREC certificate, which can be sold on the market to energy providers who are obligated to procure a certain portion of their electricity from solar generators. A qualifying site can generate these SRECs for ten years, which significantly adds to the project's financial feasibility. Some of this value is passed on by the Developer in the form of a lower price for the electricity the LHA must buy from the Developer (as discussed below).

Recent changes to the SREC program allow a Developer to maximize the value of their SRECs if their site is hosted by one or multiple low or moderate income housing provider(s). This change is largely responsible for the sharp increase in solar developer outreach to LHAs in recent months.

**How a Net Metering Credit Deal Works:** The solar site itself is not on LHA property, but on land secured by a project Developer or Owner. The Developer builds the plant, generates electricity and sends it to the wholesale power grid. The Developer is fully responsible for system construction, operation and maintenance.

The rights and obligations of the Developer and LHA are memorialized in the Net Metering Credit Purchase Agreement (NMA). The NMA is designed to reduce electricity costs for the LHA, while providing consistent energy payments to the project owner over the term of the contract. These payments help the Developer finance the construction and operation of the solar project. As Host, the LHA agrees to the long-term purchase of the electricity produced by the Developer's site at a specified price. In exchange, the LHA/Host's electric utility provides the LHA with credits on its monthly electric bill. Since the value of the credits is designed to exceed the price the LHA pays to the Developer, the difference adds up to savings on the LHA's electric bill. These contracts are generally for twenty year terms.

**Risks to the LHA:** While there are clear potential gains for LHAs that enter into NMAs, the two most significant risks are:

- 1) Major decline in market price of electricity:** In the attached form contract which DHCD is requiring all LHAs to use, the LHA agrees to pay a fixed price to the Developer for the electricity the Developer produces during the 20-year life of the contract. However, the net meter credit values, which are established according to a formula in state DPU regulations, fluctuate with the

market value of electricity. If market prices drop below the fixed purchase price the LHA pays to the Developer, then the value of the credits will decline as well, and instead of accruing savings, the LHA could end up paying more than the market rate for its electricity.

However, given the history of electricity prices over the long term, the likelihood that market prices will drop significantly below the contracted purchase price and stay depressed seems very low.

**2) Lost Opportunity Cost:** The current availability of net meter credits and SRECs makes it possible for Developers to offer LHAs significant savings at this time. While it is impossible to predict precisely when these subsidies will be exhausted, it may be in the relatively near future. Therefore, LHAs wishing to take part in these opportunities should explore them soon. Just as important, while evaluating Developer proposals, LHAs should seek out the projects that have the highest potential for actually getting built and becoming operational. If a NMA is signed now, and then the LHA learns a year from now that the Developer will not be able to build the site – due to issues with wetlands, local permitting, or lack of financing, for example – it may be too late to sign a new deal with a different Developer, since the credit and SREC allocations may be exhausted. In this case, the LHA’s opportunity to achieve savings over twenty years will have been lost.

**DHCD’s POLICY ON RETAINING SAVINGS:** If your Authority does not receive operating subsidy assistance from DHCD, then it may retain 100% of the savings accrued each year from its participation in a NMA. If your Authority operates at a deficit and receives operating subsidy assistance from DHCD, then it may retain 25% of the accrued savings each year. Since these are typically long-term, 20-year contracts, an LHA may require subsidy some years but not others. The decision as to the level of savings that the LHA may retain will be determined each year when DHCD approves the LHA’s year-end operating statement and confirms whether the LHA operated at a surplus or a deficit.

**APPLICABILITY TO STATE VS. FEDERALLY-ASSISTED PUBLIC HOUSING:** This public housing notice applies only to net metering credit contracts that relate to an LHA’s state-assisted public housing portfolio. If you operate federal public housing and wish to include the electrical load from your federal program in such a contract, you should make sure you comply with all federal/HUD contracting and procurement requirements. In addition, you may wish to review with HUD what savings, if any, can be retained by your Authority.

**PROCUREMENT:** While the Inspector General (IG)’s office has not yet issued written guidance on this topic, after a review of M.G.L. c. 30B and discussions with attorneys at the IG’s office, DHCD has determined that the procurement of a net metering credit contract is exempt from c. 30B procurement requirements, in accordance with the exemption found at Sec. 1(b)(33) which exempts “energy contracts entered into by a city or town or group of cities or towns or political subdivisions of the commonwealth, for energy or energy related services.” Please see Attachment A for the full text of this exemption.

However, particularly when procuring a long-term contract with the potential for significant savings, and for which there may be significant competition in the marketplace, it is essential that all LHAs exercise sound business practices, both to ensure the LHA obtains the best deal it can, and to ensure a reasonable level of transparency in procurement processes that ensures the public trust in the LHA’s operations.

Therefore, for LHAs interested in pursuing this program, DHCD recommends the following procurement process:

- 1) **First, determine how large a commitment you should make to purchase energy from the solar development.** The bigger the purchase, the more credits you will receive, but if you receive too many credits, they will exceed your electric bill and you won't be able to use them all. Evaluate your actual electricity usage (in kWh, not dollars) over the past few years to get an understanding of your typical annual usage.
- 2) **Next, consider the efficiency measures you have done to date, and those that you expect you may do in the future, and try to roughly estimate how they may impact your future overall usage.** Remember, this is a twenty-year agreement. For example, if you have installed LED lighting and new efficient refrigerators throughout your portfolio, and have no electrically heated buildings, you may assume overall usage may not change greatly in the years ahead, and you may want to commit to purchase a greater amount of electricity – perhaps 75 -80% of your typical kWh usage. However if you have poorly insulated, electrically heated buildings with incandescent lighting, there is likely room for conservation efforts that will significantly reduce your electricity consumption in the years ahead. In this case, you may only want to commit to 50-70% of your current kWh usage.
- 3) **Email [Paul.McPartland@state.ma.us](mailto:Paul.McPartland@state.ma.us) to request a copy of the DHCD-approved net meter credit purchase contract. Please provide this contract to interested developers and require that they use it, without any changes, in making their proposal to you, or else discuss with DHCD why you would propose to use a different contract.** We are mandating the use of this contract for the following reasons:
  - a. It was thoroughly vetted by an attorney with special expertise in utility law on behalf of an LHA and was designed to provide reasonable protection of the LHA's interests;
  - b. Requiring multiple developers to use the same contract makes it much easier to compare the proposals an LHA receives (but note, as discussed below, that the lowest price alone is not enough to make a selection – the credibility of the developer and its proposed project are the most important factors); and
  - c. We believe that neither DHCD, LHAs, nor in most cases their usual counsel have the specialized expertise in these matters to review multiple contracts in different formats and confidently compare their pros and cons with one another. Purchasing such expertise is costly, and we would prefer to not reinvent the wheel.

If there are special situations where a different contract might be called for (maybe a joint procurement effort with the local town), we would expect that an attorney experienced in utility law will be hired do a thorough review of the contract on behalf of the LHA, and not at DHCD's expense.

- 4) **Do outreach to multiple solar developers.** In some regions of the state it is more difficult to put together a feasible deal (particularly closer to dense urban areas where there is less available land), so doing broad outreach will help ensure that you get multiple offers that you can compare, and it is also part of appropriate due diligence. LHAs that have obtained multiple proposals have been able to secure the most favorable deals.
- 5) **When reviewing the proposals you receive, evaluate the experience of the developer and the feasibility of his or her project. Do NOT assume that the proposal offering the greatest savings is necessarily the best proposal.** If, six months from the time you execute a contract, you find that the Developer is unable to get the site permitted, or financed, or built,

and your deal therefore falls through, it may be too late to execute a new deal with a different Developer, since state regulations limit the total size of these deals that will qualify for credits. Once that cap is reached, you may not have an opportunity to sign another deal. A weak proposal with a great price should not be your first choice. So you should request information about, and evaluate criteria like:

- a. Have they identified a specific site and do they have legal control of the site – ownership, lease or an option – for the 20+ year life of the project?
  - b. Do they have an experienced development team that has completed such deals recently? Specifically where, and can they provide references?
  - c. Do the members of this team operate existing sites? Again, if so, specifically where, and can they provide references?
  - d. What evaluation have they done of the site – review for feasibility issues like wetlands, ledge, access, cost to prep the site for construction, etc.?
  - e. What local permits and approvals will be required, what is the current status of, and the schedule for securing, each one?
  - f. What is the status of the Interconnection Service Agreement (required to connect the power from the site to the electric grid)? Is an impact study completed or underway, and what discussions, if any, have occurred with the utility company?
  - g. How much electricity will the project produce, and if the LHA is not going to purchase all of it, have the other buyers been identified? If so, have they signed the net meter credit purchase agreement?
  - h. Have they secured a party to provide financing to the deal? If so, has that party previously financed similar deals with this developer backed by net meter credit purchase agreements? What is the status of their agreement to finance this project?
  - i. Do they have a schedule outlining the milestones they need to meet and are they on track? When do they expect to start construction and when will they finish and connect to the grid?
  - j. If their proposal is significantly lower priced for the LHA than other proposals, can they explain how they can perform successfully – including obtaining financing, constructing and operating the site - at such a low price?
- 6) **As required by the exemption at M.G.L. c. 30B, sec. 1(b)(33), within fifteen days of executing the contract you must send a copy** of the contract and a report of the process used to execute the contract to the department of public utilities, the department of energy resources, and the office of the inspector general. The Inspector General’s office has provided a form you should use for this purpose (see Attachment B). Please make sure to send a copy to Paul McPartland at DHCD as well.

Net metering credit contracts offer LHAs significant opportunities for savings and are worthy of your consideration. If you have any questions regarding the issues raised in this memo, please feel free to contact: Paul McPartland, Asset Management Coordinator, 617-573-1219, [paul.mcpartland@state.ma.us](mailto:paul.mcpartland@state.ma.us)

## **Attachment A**

### **M.G.L. c. 30B, sec. 1(b)(33):**

(b) This chapter shall not apply to . . .

(33) energy contracts entered into by a city or town or group of cities or towns or political subdivisions of the commonwealth, for energy or energy related services; provided, however, that within 15 days of the signing of a contract for energy or energy related services by a city, town, political subdivision, or group of cities, towns or political subdivisions said city, town, political subdivision, or group of cities, towns or political subdivisions shall submit to the department of public utilities, the department of energy resources, and the office of the inspector general a copy of the contract and a report of the process used to execute the contract; provided, further, that for any such contract determined to contain confidential information under subclause (r) of section 7 of chapter 4, the governmental body shall instead maintain a record of the procurement processes and awards for 6 years after the date of the final payment. The governmental body shall make such records available to the inspector general upon request; provided, however, that the inspector general shall not disclose said information;

**Attachment B**

**Contracts for Energy and Energy-Related Services  
Chapter 30B Compliance Form**

By letter dated \_\_\_\_\_, I have provided a copy of a contract and a report of the process used to execute the contract to each of the following parties in compliance with M.G.L. c. 30B, § 1(b)(33):

- Mark Marini, Secretary  
Department of Public Utilities  
One South Station, 2nd Floor  
Boston, MA 02110
- Office of the General Counsel  
Department of Energy Resources  
100 Cambridge Street, Suite 1020  
Boston, MA 02114
- Office of the Inspector General  
One Ashburton Place, Room 1311  
Boston, MA 02108

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Signature

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Printed Name

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Title

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Name of Contract

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Date of Contract Execution