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The Mass DOER is seeking to define a critical component for the increased adoption of solar energy in Massachusetts, specifically Community Shared Solar. In its initial draft the DOER has defined this structure as:

Community Shared Solar Generation Unit. *A solar photovoltaic Generation Unit that provides net metering credits to two or more utility accounts, whose owners have a formal ownership stake in the Generation Unit or the entity that owns the Generation Unit, and for which the net metering credits provided to each account do not exceed a value in excess of the equivalent of 30 MWh of generation on an annual basis.*

There is a key distinction that defines a community shared solar installation, it is...*whose owners have a formal ownership stake in the Generation Unit or the entity that owns the Generation Unit.* The distinction of formal ownership should be defined as benefitting directly in all incentives including the tax incentives, rebates and SREC revenues. Most “community solar” installations under development are not directly owned by the energy consumer, but instead owned by third party entities that sell the “energy asset” (net metering credits) to consumers in the form of shares or panels, but maintain the tax benefits and portions of the net metering and SREC benefits. This is a corrupted definition of “*formal ownership*”. The stated reason for this structure is to monetize the tax credits and depreciation benefits of the system and gain capital for the project through “ownership” sales. This does not meet the definition of *formal ownership stake*. This is third party ownership. Systems owned by third parties do not qualify as a Community Shared Solar Generation Unit for the purposes of SREC II allocations.

Formal ownership would allow for the direct purchase of the generation unit, monetization of the tax credits and the *direct full benefit* of the remaining incentives. It has been argued that this is not possible for the individual seeking to own a system that is not directly installed on their property. In its Notice 2013-70 the IRS responded directly to the question of off-site generation ownership, the 25D tax credit, and the qualified expenditure of solar electric property. They have clearly opened the door to the Community Shared Solar model.

“Q-26: A taxpayer purchases solar panels that are placed on an off-site solar array and connected to the local public utility’s electrical grid that supplies electricity to the taxpayer’s residence. The taxpayer enters into a direct contractual arrangement with

the local public utility that supplies electricity to the taxpayer's residence to allow the taxpayer to provide electricity to the grid using a net metering system that measures the amount of electricity produced by the taxpayer's solar panels and transmitted to the grid and the amount of electricity used by the taxpayer's residence and drawn from the grid. The contract states that the taxpayer owns the energy transmitted by the solar panels to the utility grid until drawn from the grid at his residence. Absent unusual circumstances, the panels will not generate electricity for a specified period in excess of the amount expected to be consumed at the taxpayer's residence during that specified period. Can the taxpayer claim the § 25D credit?

A-26: Yes. Section 25D(d)(2) defines a qualified solar electric property expenditure, in part, as an expenditure for property that uses solar energy to generate electricity for use in a dwelling unit used as a residence by the taxpayer. The taxpayer's expenditure for off-site solar panels under this type of contractual arrangement with a local public utility that supplies electricity to the taxpayer's residence meets the definition of qualified solar electric property expenditure.

This statement makes clear that a taxpayer that *formally* owns a generation unit on an offsite solar array and *enters into a direct contractual arrangement with the local public utility and that uses the solar energy for use in a dwelling...* Is the owner by definition and is allowed to claim the 25D (ITC) tax credit. This definition can be further clarified through a Private Letter Ruling (PLR) and/or the DOER taking a collective action to engage the IRS in clarifying the Massachusetts model.

There are additional contractual agreements on shared solar sites to address operations and maintenance, land leases, purchase and sale and possible decommissioning. But these are separate agreements outside of the ownership definition and outside the parameters of the DOER definition.

At a minimum the DOER should adopt language that is designed to directly benefit the residents of Massachusetts and provided equal access to the incentives. I would recommend a variant of the following definition.

*A solar photovoltaic Generation Unit that provides net metering credits to two or more utility accounts, whose owners have a formal ownership stake in the Generation Unit, are the **direct recipient of all eligible tax credits, full net metering credits, incentives, rebates**, have a direct arrangement with the local public utility through a shared meter, uses solar energy to generate electricity for use in a dwelling unit used as a residence by the owner, **will not generate in excess what is to be consumed by the resident** and for which the net metering credits provided to each account do not exceed a value in excess of the equivalent of 30 MWh of generation on an annual basis.*

An additional provision should be considered that would allow for 50% of a Community Shared Solar Generation Unit to be owned by a Coop, LLC or LLP who would supply net metering credits, under a PPA, to businesses and non-profit

organizations. This would allow sites to supply power in excess of the 30MWh limitation in support of local businesses and to provide clean energy to non-profits (places of worship, Coops, NGOs). Additionally each generation unit should be limited to no more than 1MW in size.

TPO sites that sell the “energy asset” that cancel out the tax incentives and dilute rate payer funded incentives should be considered under the managed growth sector under SREC II.

Community Shared Solar is an ideal way to make solar available to everyone. This option can be ideal for renters, home or business owners with shaded roofs, and those who choose not to install a solar system on their own roofs for financial or other reasons. The argument in favor of community shared solar relates to fairness. Because, as a group, ratepayers and/or taxpayers fund solar incentive programs, it is only fair for solar energy programs to be designed in a manner that allows all contributors to fully participate. If structured correctly the DOER can ensure that these generation units provide the greatest benefit to the ratepayers and taxpayers of Massachusetts. Allowing exclusive TPO structured sites with loosely structured “ownership” models to be considered under the SREC II program, as Community Shared Solar, will further deteriorate ratepayer support while reducing economic benefit to the commonwealth.

Thank you for your concern and diligence in this matter. I applaud the efforts of your organization on behalf of the residents of Massachusetts.

With kind regards,

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