



September 27, 2019

Judith Judson  
Commissioner  
Massachusetts Department of Energy Resources  
100 Cambridge Street, Suite 1020  
Boston, MA 02114

Dear Commissioner Judson:

Thank you for the opportunity to submit comments on the straw proposal of the Department of Energy Resources ("DOER") and its 400 MW review of the Solar Massachusetts Renewable Energy Target (SMART) Program ("SMART Program"). Having reviewed the proposal and attended one of DOER's presentations, it is easy to appreciate the thoughtfulness and creativity taken in this review and proposed changes to the SMART Program.

Klavens Law Group, P.C. provides corporate, real estate, environmental, and regulatory services and has been deeply involved in solar energy development in Massachusetts. Our clients include solar energy project developers, investors, EPC contractors and offtakers from Massachusetts and around the country who have been and continue to be key players in the growth and development of the flourishing Massachusetts solar energy sector. We have also been involved in redevelopment of brownfields and closed landfills for both solar energy use and other types of commercial development.

We have participated in multiple stakeholder processes throughout the development and implementation of the Green Communities Act and the regulatory proceedings that adopted the SREC I and II Programs, the Net Metering Program and, more recently, the SMART Program.

We believe that many of the proposed changes serve to improve the SMART Program and we offer these comments on a few areas that we think would benefit from further review and input as DOER begins its work of revising the SMART Program regulation and relevant guidelines.

*While ESS Is Vital to Clean Energy Goals, DOER Should Not Mandate ESS.*

We commend DOER for its broad based approach to growing the energy storage system ("ESS") industry in the Commonwealth. Storage has long been described as a game changer for the electric energy industry and the multi-faceted approach DOER has spearheaded has positioned Massachusetts as a leader in this emerging industry. Despite DOER's efforts, we

note that ESS adoption has hit some road bumps, mostly due to technical difficulties related to interconnection and metering. We applaud DOER for tackling the metering issue head on and believe such forward thinking is likely needed to address the underlying issues, but will leave additional comment to other technical experts who are likely to weigh in in more detail. DOER has also proposed as part of the SMART expansion to require that projects greater than 500 kW co-locate with ESS. While we believe inclusion of storage where feasible is an appropriate goal, mandating it in all instances may have a number of unintended consequences that would sideline some solar projects that would otherwise advance the Commonwealth's energy and emission goals.

With its proposal to offer a "grid location" adder/subtractor for projects that are in identified desirable or undesirable locations from a grid infrastructure perspective, DOER has recognized that there are reliability and safety considerations for the location of any distributed generation and for ESS. There are likely areas where including ESS would provide significant grid benefits, and that should certainly be incentivized. There are also areas where solar would be able to interconnect but inclusion of ESS would pose undesirable grid outcomes, yet the hardline requirement of including storage would either preclude development of such a project or potentially create negative outcomes by forcing the project to include ESS where there are marginal or negative grid benefits.

In requiring storage for every project, DOER also risks seeing the storage adder tranches be exhausted as quickly as the CSS tranches, reducing the value to the point where storage would not be economically feasible. Not only would this jeopardize achievement of the Commonwealth's storage goals but it would also threaten achievement of its RPS, clean energy, and Global Warming Solutions Act goals.

In addition, DOER has long recognized that diversity of projects is one of the foundational goals of the SMART Program and this policy objective played a significant role in the design of the tiered BCR and adder structure. It is very challenging to achieve that sort of diversification without allowing the market freedom to design projects that make sense in light of specific site conditions and other factors. Burdening all larger projects with the obligation to include energy storage interferes with sensible, project-specific decision making and will threaten achievement of the sort of diversification that DOER has sought.

We recommend removing the co-location of storage requirement from the SMART Program expansion and suggest that the goal of more storage would be better served by reviewing the storage adder and providing extra incentives for co-locating ESS with solar where it would be most beneficial, possibly through participation in the Clean Peak Standard as one example.

*A Robust Process Is Needed for a Grid-Based Adder/Subtractor Scheme.*

As noted above, we support DOER's recognizing the value (both positive and negative) of correlating distributed generation with grid infrastructure. Distributed generation can add enormous benefits for ratepayers in alleviating capital upgrades or other benefits in certain areas. It is equally true that adding solar to areas of very low load or extreme congestion can create additional burdens on grid infrastructure.

In creating this adder/subtractor mechanism, DOER is proposing to address these important considerations within the SMART incentive structure. We believe that distilling this particular issue to defined adder/subtractor boxes poses a number of challenges with the possibility of unintended consequences. We believe it is critical that DOER have a robust, transparent process with stakeholder input to develop the criteria that would be used.

*DOER Should Ensure Flexibility Is Maintained for Successful Agrivoltaic Projects.*

Throughout the development of the SMART Program, we supported DOER's highlighting the important policy of developing solar to work in tandem with agricultural activities. We believe that this dual use of agriculture and solar – or “agrivoltaics” – offers significant, multiple layers of value to the solar industry, the agricultural community, and the Commonwealth at large. Continuing to enable creativity in adoption of these projects is critical to their success. While we do not yet know what changes will be in the proposed guideline, KLG encourages DOER to be mindful that, given the diversity of agricultural activities and solar configurations, a long list of rigid regulatory requirements has the potential to sideline many potential projects that could otherwise deliver both energy and agricultural benefits.

While we understand DOER wishes to ensure that meaningful agriculture is being conducted in conjunction with a solar array, having rigid requirements stifles much of the creative thinking necessary to achieve success in this critical project type. Recent studies have shown that co-location of solar energy and agriculture, coupled with thoughtful crop planning, has resulted in multiple agricultural benefits, including better irrigation practices as result of the shade, yielding improvements in water conservation as well. We fully support DOER's vision in incentivizing agrivoltaics but believe the guideline could benefit from more robust input from the agricultural and solar communities.

*DOER Should Capture Maximum Value of Community Shared Solar.*

Under the current SMART Program framework, an applicant wishing to select “community shared solar” (“CSS”) as an adder in its SQA need only “check the box” at the time of application. Upon enrollment in the SMART Tariff when a project achieves commercial

operation, the rules require that the project be at least 90% subscribed. During the initial development of the SMART Program the question of whether there should be any additional milestones was heavily contested over the concern that the value in the earlier tranches could be lost to projects that wanted the possibility of that adder value but ultimately failed to develop as CSS.

DOER is now proposing to insert an additional requirement where any application that selects the CSS adder and doesn't move forward as CSS will be in essence be forced to submit a new SQA. DOER is also proposing a "grace period" so that, during a transition phase, applicants that had selected the CSS adder would be allowed to de-select the CSS adder without consequences. (We assume that such applicants would still have the opportunity to seek qualification for the CSS adder at a later point provided that qualification would then mean acceptance into whichever CSS adder tranche is open at that time.) Given the large volume of applications with the CSS adder and the recognition by DOER that such an additional requirement is in fact necessary to appropriately manage the value of this adder, we suggest that DOER reshuffle the CSS adder tranches. Once the grace period is over and DOER has a firm list of projects that have selected the CSS adder, it should reallocate those projects in priority order to the tranches. In other words, the first 80 MW on this revised list would be placed in tranche 1, the next 60 MW in tranche 2, etc. We believe this reordering of the tranches would more appropriately and equitably allocate the CSS adder value.

*Other Items for Consideration.*

We understand that DOER's intent in filing an emergency regulation is to apply the new requirements to solar projects without SQs or the required documentation as of the effective date. While we appreciate DOER's desire to implement these changes as quickly as possible, we think there are some extenuating circumstances that merit an exemption for certain projects without an ISA. Specifically, there are hundreds of MWs of projects in National Grid's service territory current awaiting additional review through a transmission level cluster study (the "Cluster Study") and will almost certainly not have ISAs in place in the time frame DOER anticipates filing the emergency regulation. Given the unusual circumstance of the emergence of the Cluster Study, particularly prior to DOER's announcing the proposed changes to the SMART Program, we recommend that DOER also exempt those projects with all required documentation (except the ISA) that are part of the Cluster Study prior to the adoption of the emergency regulation.

We also commend DOER for its recognition that behind the meter ("BTM") projects have not flourished under the current SMART structure. While we think many of the recommendations are a step in the right direction, we would note that, absent the monthly netting accorded net metering facilities, there will always be a value shortfall. As net metering is not currently

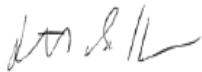
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available in all service territories, we suggest that DOER explore legislative solutions to enable BTM projects to provide optimal value to their customers.

Again, thank you for the opportunity to submit these comments as part of DOER's 400 MW review and we look forward to continued engagement in the next steps of this process.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon S. Klavens".

Jonathan S. Klavens

A handwritten signature in purple ink, appearing to read "Courtney Feeley Karp".

Courtney Feeley Karp