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Ms. Kaitlin Kelly
Massachusetts Department of Energy Resources
100 Cambridge Street, Suite 1020
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RE: 400 MW Review Public Comments

Ms. Kelly-

The Office of the Attorney General (“AGO”) appreciates the opportunity to comment on the Department of Energy Resources’ (“DOER”) straw proposal for the SMART Program 400 MW as presented by DOER at several September 2019 stakeholder meetings (“DOER 400 MW Review Proposal” or “400 MW Proposal”). The AGO submits these comments, recognizing that DOER intends to amend the SMART regulations (225 C.M.R. 20.00 *et seq.*) and receive additional comments.

A. The Cost of DOER’s Proposal

The 400 MW Proposal includes significant changes that will result in additional ratepayer costs. However, DOER does not provide a cost estimate for the program changes or the addition of 800 MW of capacity. 400 MW Proposal, at 6. The AGO is aware that the additional capacity should cost ratepayers less than the original SMART 1600 MW because the additional 800 MW will continue the declining blocks mechanism, with base compensation and some adders

reducing in blocks 9 through 12. Because DOER and stakeholders should consider both the benefits and costs of the program's various component changes, transparency on the cost of this additional 800 MW is important. Moreover, the DOER's underlying statutory authority for the SMART Program requires that the program to "lower the cost of the commonwealth's solar incentive programs for ratepayers." St. 2016, ch. 75, §11. Accordingly, the AGO requests that DOER provide an analysis of the costs of the DOER 400 MW Review Proposal, including the overall cost and the costs of the various component changes.

Specifically, the 400 MW Review Proposal includes the following proposed changes that would likely increase the overall cost of the program: 1. Base compensation rates for behind-the-meter projects decline by two percent rather than four percent as applied to all SMART facilities in the first 1600 MW (400 MW Proposal, at 6); 2. Location-based adders will not decline (400 MW Proposal, at 10); 3. Behind-the-meter Alternative On-Bill Credits ("AOBC") will qualify for additional energy compensation (400 MW Proposal, at 11–14); 4. Public off-taker adder is doubled (400 MW Proposal, at 15–18); 5. New pollinator adder for existing and new projects (400 MW Proposal, at 28); and 6. Requiring all projects over 500 kW to pair with storage, and presumably receive the storage adder (400 MW Proposal, at 6).

The AGO therefore requests that DOER provide stakeholders with the estimated costs of each proposed change to the SMART Program, so stakeholders may adequately evaluate whether the benefits of each of the proposed changes outweigh the likely costs.

B. Land Use Protections

The AGO supports DOER's proposal to adopt additional open space and land use protections through changes offered to the greenfield subtractor. In the past several years, the AGO has received an increasing volume of correspondence from Massachusetts residents

concerned by the rapid take-over of open spaces and clear-cutting of lands for solar projects. Typically, residents are not concerned about the facility itself, but are concerned about the cumulative effect of so much land being stripped and the resulting impacts, including altered water runoff and loss of tree stands, plant life, and animal habitats.

Accordingly, the AGO supports the DOER's proposed increase to the greenfield subtractor to (a) limit the number of projects on our Commonwealth's limited and precious green spaces, and (b) encourage projects likely to be sited on rooftops, carports, parking lots and other building structures.

C. Low-Income Customer Access to SMART

As DOER and the Distribution Companies' quarterly reports to the Department of Public Utilities demonstrate, low-income ratepayers adopt the SMART Program at a much smaller rate than ratepayers as a whole. 400 MW Proposal, at 19; *See generally*, D.P.U. 17-140. Every ratepayer is charged the SMART Factor to support the program, and every ratepayer should have a mechanism to access the program's direct benefits. Therefore, increasing pathways for all low- and moderate-income ratepayers to participate should be a DOER and stakeholder priority.

In particular, DOER's proposal to expand the definition of low-income to include residents living in environmental justice communities may help expand access to those ratepayers that may or may not be treated as "low-income" by rate design standards but still struggle to pay their utility bills or view solar as a luxury product. 400 MW Proposal, at 20. The AGO, however, is also concerned that efforts to expand the definition of low-income could encourage unscrupulous marketers to target these customers with unfair or deceptive acts or practices. To address this concern, the AGO recommends that DOER also implement strong consumer protections along with the definitional change (discussed in § D below).

The 400 MW Review Proposal also proposes to allow Electric Distribution Companies (“EDC”) and community choice (municipal) aggregations (“CCA”) to develop alternative models to fit within the SMART Program. 400 MW Proposal, at 20. Done right, this change could help facilitate greater low-income ratepayer participation. In particular, EDC and CCA programs can provide products and/or direct benefits to low-income ratepayers and provide income streams to facility developers without exposing either group to some of the challenges of customer acquisition (i.e., credit checks, contract negotiations, sales “incentives”). These programs, however, should be designed in collaboration with DOER and stakeholders to ensure that they are fair and transparent to all participants and without additional ratepayer costs. If an EDC or CCA program obviates the need for a SMART Program customer disclosure form due to a lack of contractual agreement, the AGO asks that DOER require that a set of standardized consumer information be provided, including but not limited to: anticipated energy production of the facility, location of the facility, and expected credits or value to be transferred. Such information categories should be determined during EDC/CCA program design with the DOER and stakeholders.

D. Consumer Protections

The rapid growth of the solar industry in the Commonwealth creates opportunities for all ratepayers, business developers, and employees but, without proper oversight, can allow for poor behavior by those trying to cut corners or hit sales targets. The AGO is encouraged by recent conversations with members of the solar development community, who want the industry to earn and maintain a good reputation with consumers and consumer advocates. However, complaints about solar sales practices, contract terms, and credit allocations to the AGO have increased in recent years, with almost 500 since January 2017 (100 of which came in the past six months).

Strong regulatory standards, paired with serious consequences and adequate enforcement, are necessary to ensure that consumers are protected and that consumer confidence in solar allows the industry to survive and thrive.

DOER should adopt its proposal to require low-income direct savings and audits as soon as possible. DOER should also codify the proposal in its regulations. 400 MW Proposal, at 25. DOER's proposed requirement that low-income customers receive either no-cost allocation of benefits or clear savings is both necessary and achievable. Because the SMART Program is ultimately a tariff-based payment from the Distribution Company, developers must take the additional steps necessary to understand which distribution rate their customers are on and how their SMART product compares, particularly for facilities that will receive a low-income adder. To meet the DOER requirement, a company selling a SMART product must compare it to the customer's current bill, computed based on the customer's kWh usage and the basic service rate.¹ Moreover, to avoid misleading low-income customers who receive the R-2 rate, developers and their sales force must be careful to understand what the R-2 low-income discount rate is for each Distribution Company, that it applies to the entire customer bill (not just the distribution or supply charge), and what month the basic service rate changes in the winter and summer.

Consumer protections begin with transparent, accurate, and easily understandable marketing. In 2018, the AGO collaborated with the DOER in drafting the set of consumer disclosure forms in use by developers today. DOER's proposed audits build upon these efforts by holding all SMART applicants accountable for the information offered to their customers.

¹ Because customers can switch back and forth between basic service and a competitive supply rate over the course of a SMART agreement, basic service is an appropriate and uniform measure for customer electricity supply costs.

Unfortunately, too often forms are not complete or fail to properly detail contract terms. Whether these omissions are simple mistakes or intentional attempts to mislead consumers may not be discernable from one form. If DOER identifies a pattern by one developer, the latter is certainly indicated, and DOER should act. The simple possibility of losing the right to participate in SMART should help encourage solar developers to provide transparent, truthful, and complete consumer sales documentation to DOER.

The AGO urges the DOER to begin the audit process as soon as the emergency regulations are filed and to apply the process to any SMART facility with a statement of qualification. Although the AGO believes that audits could take place now under the DOER's broad regulatory authority to disqualify non-compliant facilities, having the process codified in its regulations will provide a transparent and predictable process for all participants. Indeed, when applying for SMART status, applicants affirm that the information provided is true and accurate. However, if the information provided is ultimately found to be not accurate, DOER has the authority to remove a facility or participant from the program for violating the regulations and requirements in place today. The proposed auditing mechanism will provide a clear process for the DOER to apply to all applicants and facilities with statement of qualifications.

The AGO suggests three additions to DOER's proposed audit process. First, the audit process should include a mechanism for the Department of Public Utilities, consumer advocates and the Distribution Companies to refer suspected violators to DOER for review. Second, non-compliant applicants should be barred from SMART for one year or until the next iteration of SMART is established (post-block 12), whichever is longer. Third, if one particular salesperson is found to be responsible for three or more non-compliant applications, that salesperson should

be barred from the SMART program, regardless of their employer. Moreover, DOER should require developers to identify their sales force on SMART disclosure forms in order to hold a salesperson accountable who makes non-compliant sales across multiple companies. These requirements will help DOER identify and eliminate bad actors from the marketplace.

E. Additional Considerations

1. Preferred Interconnection Adder/Subtractor (400 MW Proposal, at 24). Given the impact of current and future Affected System Operator study process on interconnection application, the AGO finds this adder/subtractor an unnecessary cost to ratepayers. The ASO study process will begin to provide this direction to developers.
2. Pollinator adder (400 MW Proposal, at 24). The AGO recommends that if a SMART Facility receives the pollinator adder, it must demonstrate annual UMASS Amherst Clean Energy Extension certification to ensure that the pollinator habitat is maintained for the entirety of the SMART payment eligibility.

Overall, the AGO is encouraged by the SMART Program's progress and DOER's emphasis on consumer access and protection. Importantly, keeping these goals in mind, program design also must reduce ratepayer costs and maximize benefits for all ratepayers. The AGO respectfully requests the DOER incorporate these recommendations in the final design of the SMART emergency regulations.

Respectfully submitted,

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