

**Commonwealth of Massachusetts
Executive Office of Energy and Environmental Affairs
DEPARTMENT OF ENERGY RESOURCES**

**SOLAR MASSACHUSETTS RENEWABLE TARGET PROGRAM
(225 CMR 20.00)**

GUIDELINE

Guideline on SMART Consumer Protection

Effective Date: May 18, 2020

Revised: October 8, 2020

1) Purpose and Background

This Guideline describes the information that must be provided by the Owner or Authorized Agent (“Applicant”) of Solar Massachusetts Renewable Target (“SMART”) Solar Tariff Generation Units (“STGU”) or Community Shared Solar (“CSS”) and Low Income Community Shared (“LICSS”) STGUs to customers regarding costs and contract terms. It also details the auditing and enforcement processes the Department of Energy Resources (“Department”) will conduct of SMART Statement of Qualification Applications and Applicants.

On April 11, 2016, Governor Baker signed Chapter 75 of the Acts of 2016 into law. The Act directs the Department to create a long-term sustainable solar incentive program to promote cost-effective solar in the Commonwealth. In accordance with 225 CMR 20.07(5), the Department conducted a review of the SMART Program upon issuing Statements of Qualification for 400 MW of STGUs. Following this review, the Department issued emergency regulations on April 15, 2020 creating additional consumer protection standards to ensure customers clearly understand the terms of the contracts being signed and penalties that should be applied to Applicants who do not follow the requirements.

Throughout this Guideline, the term “Applicant” is used in reference to the entity or individual that is authorized by the Owner of the Solar Tariff Generation Unit to submit the Statement of Qualification Application to the Department. This may be the Owner or Authorized Agent, as defined under 225 CMR 20.02.

2) Requirements for Customer Disclosure Forms

The Department requires Applicants to submit customer disclosure forms for the following types of STGUs: (a) STGUs that are less than or equal to 25 kW, (b) LICSS STGUs, and (c) CSS STGUs. As referenced in Section 3(d) below, some STGUs may be eligible for an exception to the customer disclosure form requirements after the Publication Date and under specific circumstances. The *Guideline Regarding Alternative Programs for Community Shared Solar and Low Income Community Shared Solar Generation Units* may have additional customer disclosure requirements for programs offered through an electric distribution company or municipal load aggregation.

a) STGUs Less Than or Equal to 25 kW

In accordance with the requirements of 225 CMR 20.06(1)(b)4., an Applicant for a STGU that is ≤ 25 kW must submit a customer disclosure form in the Statement of Qualification Application. The customer disclosure form must be signed by the Owner of the STGU or, if the Owner is a third-party, the form must be signed by the Customer of Record. The customer disclosure forms have been developed by the Department and are available on the Department's website:

www.mass.gov/doc/small-system-customer-disclosure-form-direct-ownership (for direct ownership) and www.mass.gov/doc/small-system-customer-disclosure-form-third-party-ownership (for third-party ownership). The customer disclosure forms include, but are not limited to, the following:

- i. contract pricing for the length of the agreement,
- ii. complete system cost information,
- iii. operation and maintenance responsibilities,
- iv. disposition of associated RECs and tariff terms, and
- v. anticipated production.

In accordance with 225 CMR 20.06(1)(k) and the *Guideline Regarding Low Income Generation Units*, any STGU that services an eligible Low Income Customer, such as a Low Income STGU, must demonstrate that the Low Income Customer is receiving a net savings by enrolling in the solar contract for the entirety of the STGU's tariff term. Evidence to support this requirement includes, but is not limited to, the following information:

1. a rate comparison between the customer's one year average basic service rate and the rate offered under the solar contract, including all applicable discounts, posted on a recent bill and the corresponding rate charges and/or credits pursuant to the solar contract, to be computed on the customers' kilowatt hour usage. If the customer is paying for a supply rate other than basic service, the rate comparison should be customized to that customer's unique costs. The escalator in the solar contract must not exceed 3% per year;
2. demonstrating bill credits or electricity are delivered each month to the customer at no cost to the customer, and resulting in a net reduction in the customer's total electricity bill; or
3. other evidence to the Department's satisfaction the customer is receiving savings.

The customer disclosure form for eligible Low Income Customers must include the net savings.

b) Low Income Community Shared Solar

In accordance with the requirements of 225 CMR 20.06(1)(f)2., the Owner or Authorized Agent of a prospective LICSS STGU must submit a copy of a customer disclosure form signed by each Customer of Record receiving electricity or bill credits. The customer disclosure form for all CSS projects has been developed by the Department and is available on the Department's website: <https://www.mass.gov/doc/community-solar-customer-disclosure-form>. The customer disclosure forms include, but are not limited to, the following:

- i. contract pricing for the length of the agreement,
- ii. complete system cost information,
- iii. operation and maintenance responsibilities,
- iv. disposition of associated RECs and tariff terms, and
- v. anticipated production.

Consistent with the *Statement of Qualification Reservation Period Guideline*, the LICSS STGU Owner or Authorized Agent must provide customer disclosure forms and updated off-taker lists for

any new Customers of Record participating in the LICSS project and submit these annually to the Department no later than December 31st.

In accordance with the 225 CMR 20.06(1)(k) and the *Guideline Regarding Low Income Generation Units*, any STGU that services an eligible Low Income Customer, such as a LICSS STGU, must demonstrate that the Low Income Customer is receiving a net savings by enrolling in the solar contract for the time the customer is participating and the STGU is enrolled in the SMART Tariff. The customer disclosure form for eligible Low Income Customers must include the net savings.

c) Community Shared Solar

In accordance with the requirements of 225 CMR 20.06(1)(h)2., the Owner or Authorized Agent of a prospective CSS STGU must submit a copy of a customer disclosure form signed by each Customer of Record receiving electricity or bill credits. The customer disclosure form for all CSS projects has been developed by the Department and is available on the Department's website: <https://www.mass.gov/doc/community-solar-customer-disclosure-form>. The customer disclosure forms include, but are not limited to, the following:

- i. contract pricing for the length of the agreement,
- ii. complete system cost information,
- iii. operation and maintenance responsibilities,
- iv. disposition of associated RECs and tariff terms, and
- v. anticipated production.

Consistent with the *Statement of Qualification Reservation Period Guideline*, the CSS STGU Owner or Authorized Agent must provide customer disclosure forms and updated off-taker lists for any new Customers of Record participating in the CSS project and submit these annually to the Department no later than December 31st.

d) Exception to Customer Disclosure Forms

Applicants seeking a Statement of Qualification may be eligible for an exception to the customer disclosure requirements under the following situations:

- i. Per CMR 20.06(1)(n), customer disclosure forms may not be required for LICSS and CSS STGUs if the Applicant can demonstrate to the Department's satisfaction that the Customers of Record are enrolled without a customer contract (e.g., a housing authority).
- ii. Per CMR 20.06(1)(f)2. and (h)2., customer disclosure forms are not required for those participants in LICSS or CSS STGUs who are seeking to receive bill credits in excess of those produced annually by 25 kW of nameplate capacity.

3) Auditing SMART Applications

The Department shall conduct periodic audits of Applicants' SMART Statement of Qualification Application submissions at random. The audit will review the customer disclosure forms for material defects in the information provided, including, but not limited to:

- i. missing information, unless noted and explained adequately as not applicable;
- ii. discrepancies between the information provided on the customer disclosure form and the customer contract that impact the cost of the contract;
- iii. undisclosed fees;

- iv. misrepresented savings;
- v. demonstration of net savings for Low Income Customer, if applicable; and
- vi. whether other customer disclosure requirements were met in accordance with the *Guideline Regarding Alternative Programs for Community Shared Solar and Low Income Community Shared Solar Generation Units*.

Applicants will be informed by the Department when it is commencing an audit. The Department will conduct a desk audit to review materials attached to the application in the SMART portal. The Applicant may be required to provide additional documentation. For CSS and LICSS STGUs, this could include all customer contracts. Failure of the Applicant to provide the requested information within 10 Business Days may result in the Department taking actions as outlined in Section 4: Issuance of Warnings of this Guideline below.

Following an audit, the Department will supply the Applicant with a draft report documenting the findings. The findings will be based on factual review of the materials and they will be classified into the following categories:

- i. Compliance: documentation demonstrated the requirements of the program were met
- ii. Non-compliance: the Applicant was unable to present documentation sufficient to demonstrate the requirements of the program were met, or there was a material defect in the documentation provided that demonstrated program requirements were not met.
- iii. Improvement Needed: documentation demonstrated compliance, but areas requiring improvement were identified.
- iv. Best practice: documentation demonstrated an exceptional practice that should be modeled and used more widely by Applicants to the program.

The Applicant will have 10 Business Days to review the draft audit report. If the draft audit report had a finding of non-compliance due to sufficient documentation not being presented to the Department, the Applicant may provide the necessary documentation during this time. The Applicant will not be able to make corrections to documentation to address any non-compliance findings due to material defects. Following the Applicant's review of the draft audit report, the Department will issue a final audit report to the Applicant and, if necessary, proceed in accordance with Section 4: Issuance of Warnings of this Guideline.

The public may report concerns of business practices to the Department by email DOER.SMART@mass.gov or by filing a complaint with the Office of the Attorney General at www.mass.gov/how-to/file-a-consumer-complaint. The Department may conduct additional auditing of an Applicant or company, as necessary.

4) Issuance of Warnings

Within a single audit, an Applicant shall receive a warning for each non-compliance event or element. During an audit, it is possible for more than one warning to be issued on a single application or multiple warnings issued if the same non-compliance is found on more than one application filed with the Solar Program Administrator. Customers of an Applicant that is found to be non-compliant will be held harmless by the Department and no actions will be taken against the customer.

Upon the issuance of a third warning, even in the event all three warnings are issued concurrently, the Applicant shall be notified that they may not submit new Statement of Qualification Applications to the SMART program for a period of 12 months ("12-Month Freeze").

The Department reserves the right to publish a list of Applicants that have received warnings in the interest of transparency for SMART consumers and to provide further guidance to all Applicants regarding the types of non-compliance that constitute a warning. A warning on an Applicant's record shall expire two years after the Department's issuance of the warning.

5) Remediation

Upon issuance of a warning, the Applicant may request a meeting with the Department to discuss the audit and the resulting warning.

An Applicant may request remediation from the Department after issuance of a warning. The Department shall consider all remedial requests and may make modifications at the Department's discretion.