

**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 Regarding Low Income Generation Units

Effective Date: April 26, 2018

Revised: May 18, 2020

1) Background and Purpose

On April 11, 2016 Governor Baker signed Chapter 75 of the Acts of 2016 into law. The Act directs the Department of Energy Resources (“Department”) to create a long-term sustainable solar incentive program to promote cost-effective solar in the Commonwealth. The Act further directed the Department to “...differentiate incentive levels to support diverse installation types and sizes that provide unique benefits, including, but not limited to, community-shared solar facilities, low-income solar facilities and municipal or other governmental entity-owned solar facilities.” In developing the Solar Massachusetts Renewable Target (“SMART”) Program to meet the statutory requirements, the Department established three types of low income Generation Units to ensure that low income residents can access the program.

This Guideline provides information regarding the manner in which Generation Units may qualify as one of the three types of low income Solar Tariff Generation Units identified under the SMART Program. Further guidance for applicants seeking to become a Low Income Community Shared Solar Tariff Generation Unit by participating in a municipal load aggregation or Distribution Company program is provided in the Department’s *Guideline Regarding Community Shared Solar and Low Income Community Shared Solar Tariff Generation Units*.

Throughout this document the term Publication Date is used to reference when certain provisions of the regulations go into effect. Publication Date is defined in 225 CMR 20.02 as “[t]he date established by the Department promulgation of revisions to the SMART Program pursuant to 225 CMR 20.07(5).” Based on this definition, and following the promulgation of the revised regulations, the Publication Date is established as April 15, 2020.

2) Eligible Low Income Generation Units

225 CMR 20.02 defines *Low Income Customer* as an *End-use Customer that qualifies as a low income customer under the applicable rate class with its local Distribution Company or is a resident in a Low Income Eligible Area, that is defined in 225 CMR 20.02, as a neighborhood, as identified through American Community Survey data, that has household income equal to or less than 65 percent of the statewide median income for Massachusetts.*

The definition of Low Income Eligible Area aligns with the Environmental Justice policy of the Commonwealth of Massachusetts. Neighborhoods meeting this definition can be identified by

accessing the interactive map developed through MassGIS that is available at:
http://maps.massgis.state.ma.us/map_ol/ej.php

Under the SMART Program, Generation Units are eligible to qualify as one of three types of low income Solar Tariff Generation Units, which are defined under 225 CMR 20.02 as follows:

- i. *Low Income Community Shared Solar Tariff Generation Unit. A Community Shared Solar Tariff Generation Unit with at least 50% of its energy output allocated to Low Income Customers in the form of electricity or bill credits.*
- ii. *Low Income Solar Tariff Generation Unit. A Solar Tariff Generation Unit with an AC rated capacity of less than or equal to 25 kW that serves Low Income Customers.*
- iii. *Low Income Property Solar Tariff Generation Unit. A Solar Tariff Generation Unit with a rated capacity greater than 25 kW that provides all of its generation output in the form of electricity or net metering credits to low or moderate income housing, as defined under M.G.L. c. 40B.*

3) Set-aside for Low Income Generation Units

Pursuant to 225 CMR 20.05(3)(d), after the Publication Date and beginning with the first full Capacity Block in a service territory, each Capacity Block will have a minimum of 5 percent of its total available capacity dedicated to Low Income Community Shared and Low Income Property Solar Tariff Generation Units. Please reference the Department's *Guideline on Capacity Blocks, Base Compensation Rates, and Compensation Rate Adders* for more information about this set-aside.

If a STGU is eligible for both the set-aside for Low Income Community Shared and Low Income Property Solar Tariff Generation Units pursuant to 225 CMR 20.05(3)(d) and the set-aside for STGUs >25kW and ≤500 kW, the Applicant may select which set-aside they are applying for, but must select one or the other.

4) Demonstration of Net Savings to Low Income Customers

Per 225 CMR 20.06(1)(k), after the Publication Date, Solar Tariff Generation Units serving eligible Low Income Customers must demonstrate to the Department's satisfaction that any such customers will receive a net savings by enrolling in the solar contract. Evidence to support this requirement includes but is not limited to the following information:

- i. a rate comparison between the customer's existing basic service rate, 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. The escalator in the solar contract must not exceed 3% per year;
- ii. 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 electricity bill; or
- iii. other evidence to the Department's satisfaction the customer is receiving savings.

5) Low Income Solar Tariff Generation Unit

To qualify as a Low Income Solar Tariff Generation Unit, the STGU must be ≤25kW, and the Owner or the Authorized Agent of the STGU must provide evidence satisfactory to the Department that

demonstrates 100% of the Generation Unit's output is provided to a Low Income Customer. Acceptable information to demonstrate eligibility includes but is not limited to the following items:

- i. The Low Income Customer's current electric bill, indicating that the customer qualifies as a low income customer under the applicable rate class with its local Distribution Company.
- ii. Evidence that the End-Use Customer resides in a Low Income Eligible Area.

6) Low Income Community Shared Solar Tariff Generation Units

a) Evidence for Qualification:

To qualify as a Low Income Community Shared Solar Tariff Generation Unit, a Generation Unit Owner or their Authorized Agent must provide evidence that the Generation Unit meets the definition in 225 CMR 20.02 through one of the following:

- i. If a Net Metered Generation Unit, a copy of the Generation Unit's Schedule Z form demonstrating at least 50% of the Generation Unit's output is allocated to Low Income Customers or other evidence satisfactory to the Department that demonstrates at least 50% of the Generation Unit's output is allocated to Low Income Customers.
- ii. If an Alternative On-Bill Credit Generation Unit, a copy of the Generation Unit's Payment/Credit form, any other form approved as a part of an order approving the SMART Tariff, or other evidence satisfactory to the Department that demonstrates at least 50% of the Generation Unit's output is allocated to Low Income Customers.
- iii. If the electricity or bill credits are being allocated through a municipal load aggregation program or through a Low Income Community Shared Solar program administered by a Distribution Company, applicants must follow the requirements established in the Department's *Guideline Regarding Community Shared Solar and Low Income Community Shared Solar Generation Units*.

b) Limitations to Bill Credit Allocation:

No more than two subscribers to the Low Income Community Shared Solar Tariff Generation Unit may receive bill credits in excess of those produced annually by 25 kW of nameplate capacity, and the combined share of those subscribers' capacity cannot exceed 50 percent of the total capacity of the Solar Tariff Generation Unit, except in the case of Solar Tariff Generation Units smaller than 100 kW.

Neither an individual nor a distinct legal entity can receive bill credits or electricity in excess of the limitations noted above, even if the credits are allocated across multiple utility accounts.

c) Required Customer Disclosure Forms:

Applicants for Statements of Qualification for Low Income Community Shared Solar Tariff Generation Units must comply with the customer disclosure requirements that are detailed in the *Guideline on SMART Consumer Protection*.

7) Low Income Property Solar Tariff Generation Unit

If a Generation Unit is seeking qualification as a Low Income Property Solar Tariff Generation Unit, the Owner or their Authorized Agent must provide evidence satisfactory to the Department that

demonstrates both the property and the off-taker agreement meet the definition in 225 CMR 20.02. This definition has two major components:

- i. a requirement that all of the generation output from the Generation Unit be delivered to or serving low or moderate income housing, and
- ii. a requirement that the low or moderate income housing meet the definition in the referenced statutory provision.

Pursuant to statute, low or moderate income housing is defined as:

“...any housing subsidized by the federal or state government under any program to assist the construction of low or moderate income housing as defined in the applicable federal or state statute, whether built or operated by any public agency or any nonprofit or limited dividend organization.” *See*, M.G.L. c. 40B, § 20.

In order to implement the statutory provisions found in M.G.L. c. 40B, §§ 20 through 23, the Massachusetts Department of Housing and Community Development (DHCD) has promulgated regulations at 760 CMR 56.00, *et seq.*

By regulation, DHCD further refines the definition of low or moderate income housing as

“...any units of housing for which a Subsidizing Agency provides a Subsidy under any program to assist the construction or substantial rehabilitation of low or moderate income housing, as defined in the applicable federal or state statute or regulation, whether built or operated by any public agency or non-profit or Limited Dividend Organization. If the applicable statute or regulation of the Subsidizing Agency does not define low or moderate income housing, then it shall be defined as units of housing whose occupancy is restricted to an Income Eligible Household.” *See*, 760 CMR 56.02.

Applicants seeking to qualify as a Low Income Property Solar Tariff Generation Unit pursuant to the 225 CMR 20.00 should review both the statutory and regulatory definitions of all applicable terms before proceeding.

All determinations as to whether a project qualifies as serving low or moderate income housing will be made by the Department. Final determinations as to whether the all applicable requirements have been met will be made during the Statement of Qualification Application (SQA) process pursuant to 225 CMR 20.06, during which the appropriate Compensation Rate Adder is assigned to the Solar Tariff Generation Unit. In order to obtain a Statement of Qualification for a Low Income Property Solar Tariff Generation Unit, an applicant must provide the following supplementary information with their SQA:

a) Proof of Low or Moderate Income Housing:

Applicants must demonstrate that the recipient(s) for the Generation Unit’s output meets the eligibility criteria set forth in the SMART Regulation. This requirement is slightly different for public housing authorities, as opposed to private entities.

- i. **Public Housing Authorities:** Any public housing authority in Massachusetts meets the eligibility criteria to qualify as low or moderate income housing. If an applicant can document that 100% of their generation output is being delivered to a public housing authority, the Generation Unit will be deemed eligible as a low or moderate income

Generation Unit. Lists of public housing authorities can be found on the following two websites:

- (1) Department of Housing and Community Development (DHCD)
<http://www.mass.gov/hed/economic/eohed/dhcd/contacts/local-housing-authority-listing.html>
- (2) US Department of Housing and Urban Development (HUD)
<https://www.hud.gov/states/massachusetts/renting/hawebsites>

ii. **Private Entity:** When considering the eligibility of a Generation Unit serving privately-owned low or moderate income housing (for-profit and non-profit), additional criteria must be met in order for the property being served by the Generation Unit to be deemed eligible. The applicant must provide evidence satisfactory to the Department that:

- (1) at least 25% of the housing available at the properties to be served by the Generation Unit is required to be rented to households that are at or below 80% of the Area Median Income (“AMI”); or
- (2) at least 20% of the housing available at the properties to be served by the Generation Unit is required to be rented to households that are at or below 50% of the AMI.

The applicant must also provide evidence satisfactory to the Department that demonstrates that these criteria will remain satisfied for a term that is at least coincident with the 20-year SMART term. If the effective criteria is less than the 20-year SMART term, the applicant shall demonstrate a commitment to renew or extend the criteria at the time of application. Failure to renew or extend a criteria term less than the 20-year SMART term may result in the loss of a Generation Unit’s Statement of Qualification under the SMART Program.

This demonstration of commitment can be made by providing one or more of the following documents and highlighting the relevant provisions that memorialize the criteria listed above are being satisfied:

- Regulatory Agreement (memorializes affordability restrictions between owner and state or federal agency);
- Deed Restriction;
- Loan Agreement;
- Affordable Housing Restriction (lists the number of restricted units, income to which they are restricted to, and term of agreement);
- Housing Assistance Payments (HAP) Contract (documents section 8 provisions or state vouchers);
- Rent Roll/Income Report (shows actual annual income of existing residents);
- Utility Program Affordability Restriction;
- Tax Credit Regulatory Agreement and Declaration of Restrictive Covenants; and
- Other relevant documentation not listed.

Note: Information provided to the Department is presumed to be a matter of public record. Any confidential or sensitive materials or data relative to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy or otherwise protected by law, should not be provided to the Department. Consistent with this instruction, applicants may redact those portions of the documents listed above and include a

notation certifying as to why something has been redacted. The Department reserves the right to confirm the accuracy of any redacted materials on a case-by-case basis.

b) Output Delivered to Low or Moderate Income Housing

In order to obtain a Statement of Qualification, an applicant must provide evidence satisfactory to the Department that demonstrates that the Solar Tariff Generation Unit will deliver 100% of its output in the form of electricity or net metering credits to the low or moderate income housing or the residents of low or moderate income housing. This must be documented as follows:

- i. If output is being provided in the form of electricity, the applicant must demonstrate that 100% of the electricity generated by the Generation Unit will be delivered to an On-Site Load as defined in 225 CMR 20.02. To make this demonstration, the applicant must attest that the Generation Unit is interconnected behind-the-meter of the low or moderate income housing and provide a copy of the most recent utility bill for the facility that shows at least one year of historical load data. Estimates may be provided for new construction or in cases where less than one year of historical data exists.
- ii. If output is being provided in the form of net metering credits, this must be documented through a completed Distribution Company Schedule Z form, or some other similar form of documentation.
- iii. If 100% of the output is being provided through a combination of electricity and net metering credits, the applicant must provide evidence of both (i) and (ii), above. Net metering credits can be provided to any meter of a property designated as low or moderate income housing, including those serving common property, low income tenants, and other tenants.

c) Minimum Agreement Term of 20 Years

Applicants must provide evidence satisfactory to the Department, that the Generation Unit will deliver 100% of its output in the form of electricity or bill credits to the low or moderate income housing for a period of time that is coincident with the length time that the Generation Unit would be eligible to receive the SMART incentive payment. If the Applicant does not have a 20-year agreement with an off-taker, the applicant must provide proof of intent to renew the agreement for at least 20 years. If the Generation Unit is owned by the low or moderate income housing facility receiving the electricity or bill credits, no proof of an agreement is necessary.

8) Submission of Optional Pre-Determination Request

As stated above, the final determination of a Generation Unit's eligibility as a Low Income Property Solar Tariff Generation Unit is contained in a Statement of Qualification, which cannot be granted until an applicant has submitted a complete SQA to the Department and the Generation Unit has received its authorization to interconnect. However, the Department recognizes that in some circumstances, an entity planning to submit an SQA under 225 CMR 20.06 may request guidance from the Department as to whether a potential Generation Unit is likely to qualify as serving low or moderate income housing prior to submitting an SQA. To facilitate these requests, the Department will provide such guidance via a written "Low Income Property Solar Tariff Generation Unit Pre-Determination Letter" ("Pre-Determination Letter").

To obtain a Pre-Determination Letter, applicants must submit a written request to the Department demonstrating the Generation Unit is proposed to serve low or moderate income housing, as described above. A Pre-Determination Letter Request and accompanying documentation must be submitted electronically to: DOER.SMART@mass.gov.

The Department will respond to a Pre-Determination Request either with a request for additional information or the issuance of a Pre-Determination Letter.¹ The Department's Pre-Determination Letter is not a final agency decision, is not binding on the Department, and does not give rise to any appeal right under M.G.L. c. 30A, or any other law. The Pre-Determination Letter is based on the information provided to the Department consistent with this Guideline, and the Department reserves the right to make a different determination in its Statement of Qualification should information provided to the Department in connection with a Pre-Determination Request prove to be materially inaccurate or incomplete. A sample Pre-Determination Letter can be found in Attachment A.

¹ Generally, the Department will provide the Pre-Determination Letter within thirty (30) days after receiving a complete request, or within thirty (30) days after receiving a complete response to any request by the Department for additional information, whichever is later.

ATTACHMENT A: Sample Pre-Determination Letter

DATE

[First Name], [Last Name]
[Title]
[Organization]
[Address]
[City], [State] [Zip Code]

Dear Mr./Ms. [Last Name],

The purpose of this letter is to respond to [Organization's] request dated [date], concerning the potential qualification of [Site(s)] as Low Income Property Solar Tariff Generation Unit under 225 CMR 20.00. The Department of Energy Resources ("Department") has reviewed your request which explains [summarize factual details].

As prescribed in 225 CMR 20.00, Low Income Property Solar Tariff Generation Units are eligible to receive the corresponding Compensation Rate Adder under 225 CMR 20.07(4)(b). The Department has issued guidance to govern the pre-determination of low or moderate income housing in its *Guideline Regarding Low Income Generation Units* ("Guideline"). Acting in accordance with 225 CMR 20.00 and the applicable Guideline, the Department has reached the conclusion that the Site likely [does/does not] meet the criteria set forth in 225 CMR 20.00 to be considered as providing all of its generation output in the form of electricity or net metering credits to low or moderate income housing. This conclusion is based upon the following: [summarize reasons why site meets / does not meet criteria].

Please be advised that this pre-determination of low or moderate income eligibility letter is not a final agency decision, and is not binding on the Department, and does not give rise to any appeal right under M.G.L. c. 30A, or any other law. The Department will make a final determination on the eligibility of the Site's status as a low or moderate income housing Generation Unit at the time it issues a Statement of Qualification under 225 CMR 20.06. Such final determination may be different from the pre-determination contained in this letter if information provided by you is materially inaccurate or incomplete.

If you have any questions regarding this pre-determination of low or moderate income housing eligibility, please contact Kaitlin.Kelly@mass.gov or 617-626-7343.

Sincerely,

Eric Steltzer
Director, Renewable and Alternative Energy Development