

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

**RENEWABLE ENERGY PORTFOLIO STANDARD  
(225 CMR 14.00)**

**GUIDELINE**

**Guideline Regarding Low or Moderate Income Housing Generation Units**

**Effective Date: March 27, 2015**

This document provides guidance regarding the manner in which Solar Carve-Out II Renewable Generation Units and the real property to which they provide 100% of the electricity or net metering credits they generate may qualify as a low or moderate income housing Solar Carve-Out II Renewable Generation Unit under the Department of Energy Resource’s (DOER) Renewable Energy Portfolio Standard – Class I Regulation 225 CMR 14.00 (Class I Regulation). Under the Class I Regulation, Generation Units are eligible to qualify under the Solar Carve-Out II (SREC II) Market Sector A category, as prescribed in 225 CMR 14.05(9)(l)2.a., as follows:

a. Market Sector A. The following types of Generation Units will qualify as Solar Carve-out II Renewable Generation Units under Market Sector A provided they meet the eligibility criteria prescribed in 225 CMR 14.05(9)(a):

\* \* \* \*

v. Generation Units that provide all of their 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, § 20.

This provision of the Class I Regulation has two major components: (1) a requirement that all of the generation output from the Generation Unit be delivered to or serving low or moderate income housing, and (2) 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. Parsing this regulatory definition further, the terms Subsidizing Agency, Subsidy, Limited Dividend Organization, and Income Eligible Household all likewise have their own defined meanings. Applicants seeking to qualify a Generation Unit as serving low or moderate housing pursuant to the Class I Regulation should review both the statutory and regulatory definitions before proceeding.

**HOW DO I DEMONSTRATE THAT MY PROJECT QUALIFIES AS SERVING LOW OR MODERATE INCOME HOUSING?**

The RPS Class I regulation provides that a determination as to whether a project qualifies as serving low or moderate income housing is made by DOER. The final determination as to whether the regulatory definition is satisfied is made in the Statement of Qualification Application (SQA) process pursuant to 225 CMR 14.06, in which the appropriate SREC Factor is also assigned. In order to obtain a Statement of Qualification for a low or moderate income housing Generation Unit, an applicant must provide the following supplementary information with their SQA:

**1. 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 Class I Regulation. This requirement is slightly different for public housing authorities, as opposed to private entities.

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:

Department of Housing and Community Development (DHCD)

<http://www.mass.gov/hed/economic/eohed/dhcd/contacts/local-housing-authority-listing.html>

US Department of Housing and Urban Development (HUD)

<http://www.hud.gov/offices/pih/pha/contacts/states/ma.cfm>

Private Entity

When considering the eligibility of a Generation Unit serving privately-owned low or moderate income housing (profit and non-profit), there are additional criteria that must be met in order for the property being served by the Generation Unit to be deemed eligible. In particular, the applicant must demonstrate:

- a. that 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

- b. that 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 demonstrate that these criteria will remain satisfied for a term that is at least coincident with the 10 year SREC term. If the term that the criteria must remain in effect is less than the 10 year SREC term, the applicant will need to demonstrate a commitment to renewing or extending the criteria at the time of application. Failure to renew or extend may result in the loss of a Generation Unit's Statement of Qualification under the Solar Carve-Out II Program.

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

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

**Note:** DOER may or may not be able to treat these documents as confidential. Any 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 DOER. 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. DOER reserves the authority to confirm the accuracy of any redacted materials on a case-by-case basis.

## **2. Proof that 100% of Output is Delivered to Low or Moderate Income Housing**

In order to obtain a Statement of Qualification, an applicant must demonstrate that the 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:

- a. 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 14.05(9)(a). 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.

- b. 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.

If 100% of the output is being provided through a combination of electricity and net metering credits, the applicant must provide evidence of both a. and b. 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.

### **3. Proof of a Minimum Agreement Term of 10 Years**

Applicants must provide conclusive evidence, satisfactory to DOER, that the Generation Unit will deliver 100% of its output in the form of electricity or net metering 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 generate SRECIIs. If the Generation Unit is owned by the low or moderate income housing facility receiving the electricity or net metering credits, no proof of an agreement is necessary.

#### **HOW DO I OBTAIN A DETERMINATION FROM DOER THAT MY PROPERTY WILL QUALIFY AS LOW OR MODERATE INCOME HOUSING BEFORE SUBMITTING AN SQA?**

As stated above, the final determination of a Generation Unit's eligibility as a low or moderate income Generation Unit is contained in a Statement of Qualification, which cannot be granted until an applicant has submitted a complete SQA to DOER and the Generation Unit has received its authorization to interconnect. However, DOER recognizes that in some circumstances, an entity planning to submit an SQA under 225 CMR 14.06 may wish to obtain guidance from DOER as to whether a potential Generation Unit is likely to qualify as serving low or moderate income housing, before submitting an SQA. To facilitate these requests, DOER will provide such guidance via a written "Low or Moderate Income Housing Generation Unit Pre-Determination Letter."

To obtain a Low or Moderate Income Housing Generation Unit Pre-Determination Letter, applicants must submit a written request to DOER that demonstrates 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.SREC@state.ma.us](mailto:DOER.SREC@state.ma.us)

DOER will respond to a Pre-Determination Request either with a request for additional information, or the issuance of a Low or Moderate Income Housing Generation Unit Pre-Determination Letter. Generally, DOER 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 DOER for additional information, whichever is later. DOER's Low or Moderate Income Housing Generation Unit Pre-Determination Letter is not a final agency decision, is not binding on DOER, and does not give rise to any appeal right under M.G.L. c. 30A, or any other law. The Low or Moderate Income Housing Generation Unit Pre-Determination Letter is based on the information provided to DOER consistent with this Guideline, and DOER reserves the right to make a different determination in its Statement of Qualification should information provided to DOER 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.

## 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 or moderate income housing Generation Unit under 225 CMR 14.00. The Department of Energy Resources ("Department") has reviewed your request which explains [summarize factual details].

As prescribed in 225 CMR 14.05(9)(l)2.a.v., low or moderate income housing Generation Units are eligible to qualify under Market Sector A. This provision reads as follows:

*v. Generation Units that provide all of their 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, § 20.*

The Department has issued guidance to govern the pre-determination of low or moderate income housing. *Guideline Regarding Low or Moderate Income Housing Generation Units* ("Guideline"). Acting in accordance with 225 CMR 14.00 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 14.00 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 14.06. 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 [Michael.Judge@state.ma.us](mailto:Michael.Judge@state.ma.us) or 617-626-7368.

Sincerely,

Dwayne Breger, Ph.D.  
Director, Renewable and Alternative Energy Development