

April 2, 2018

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

**Re: SMART Customer Disclosure Forms**

Dear Commissioner Judson:

Thank you for the opportunity to comment on the draft customer disclosure forms released by the Department of Energy Resources (DOER) on March 12, 2018, as part of the ongoing development of the Solar Massachusetts Renewable Target (SMART) program. The Northeast Clean Energy Council (“NECEC”) and our member companies are appreciative of the efforts made by the Department regarding these forms, and we hope the feedback we have collected from our member companies will help refine and improve the disclosure forms prior to their finalization. NECEC looks forward to working with DOER and other solar industry partners and customers to advance disclosure forms that will best serve Massachusetts customers and the Commonwealth’s solar industry.

NECEC is the lead voice for hundreds of clean energy companies across the Northeast, helping to grow the clean energy economy. NECEC’s mission is to create a world-class clean energy hub in the region delivering global impact with economic, energy and environmental solutions. NECEC is the only organization in the Northeast that covers all of the clean energy market segments, representing the business perspectives of investors and clean energy companies across every stage of development. NECEC members span the broad spectrum of the clean energy industry including as solar, wind, energy storage, energy efficiency, microgrids, CHP, fuel cells, and advanced and “smart” technologies. Our members are already – or are very interested in – doing business in the Commonwealth and helping to grow the clean energy economy.

**Overview**

NECEC appreciates and agrees with DOER’s desire to promote transparency within the solar market and ensure that customers can make well-informed decisions throughout the course of the SMART program. We support the introduction of new standardized disclosure forms, and we hope that future iterations of the draft disclosure forms can effectively and efficiently accomplish these laudable goals. As currently drafted, the disclosure forms contain several points of ambiguity and potential concern for our member companies, and we offer the below comments and recommendations to help DOER improve and refine these forms as we move closer to the launch of the SMART program.

As a general principle, our members believe that simpler is better for customers. Streamlining the disclosure forms to make them as straightforward and accessible as possible will go far in allowing customers to easily digest the information they contain. In this regard, we submit that it would be very valuable, to the extent practicable, to narrow the disclosure forms down to one side of a page, or so that only the signature sections remain on the second page at the least. By the same token, however, it may be valuable to include a small legend defining any

abbreviations/acronyms referenced in the disclosure forms (e.g., kW, kWh, etc.). We would be glad to work with DOER to incorporate the streamlining edits described below and adjust the formatting of the disclosure forms to maximize ease of understanding.

In the below sections, we offer further comments, recommendations, and questions pertaining to the specific provisions and fields contained in the two types of disclosure forms: residential (direct ownership and third-party owned), and community shared. We also note our acknowledgment of and support for the observations and recommendations made by the Solar Energy Industries Association (SEIA) and the Coalition for Community Shared Solar Access (CCSA).

### **Small System Customer Disclosure Forms (Direct Ownership, Third-Party Owned)**

While the disclosure regarding year one energy production and savings of residential rooftop systems will be very helpful to customers, we recognize that there could be differences in how these figures are calculated by various solar companies, each of which may use a slightly different method. As such, we encourage DOER to define a standardized method for calculating these figures, which will promote consistency across providers/installers. In addition, if possible, we echo suggestions that the Department engage with the California Contractors State Licensing Board, which is currently developing and implementing a solar energy system disclosure document pursuant to AB1070 aimed at standardizing the calculation and presentation of utility bill savings for consumers.<sup>1</sup> Developing standardized methodologies for consumer solar value proposition calculations that are the same across state borders is ideal and would best support uniform industry development in multiple markets.

Several NECEC members have raised concerns about one specific provision in the proposed residential forms. The draft form for small system (direct ownership) customers contains a 'Financing Information' section that includes requirements to disclose select costs of the project associated with financing, namely *'dealer fees or other charges associated with the financing'*. Our members are concerned that requiring disclosure of dealer fees in the SMART disclosure forms could create a broad regulatory compliance challenge and potential legal problem for individual financing entities and the industry at large. This is because, under the terms of common financing agreements, a contractor may not be allowed to impose a surcharge on customers to cover the cost of any dealer fees. In addition, contractors may be prohibited from disclosing these fees. As we understand from some of our members, such contractual prohibitions are necessary to allow financing entities to reliably comply with federal truth-in-lending regulations, namely Regulation Z (see 12 CFR §1026.4).

Furthermore, depending on when SMART customer disclosure forms are presented, disclosing dealer fees could potentially be confusing or misleading to a consumer. Since different solar finance providers have different fee structures and most solar installers are eligible to work with multiple financing providers, there are likely multiple financing programs available for any given project. Thus, even if an installer has estimated dealer fees for a project, unless and until a customer applies, is approved for, and completes a loan transaction through a specific program, the actual dealer fees for such project will not be known. So unless this disclosure is presented after a loan is funded, which is generally following the installation of the solar project (thus likely defeating much of the purpose of an upfront disclosure), it could actually serve to misinform or

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<sup>1</sup> AB1070 available online at [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180AB1070](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB1070).

confuse consumers. Residential customers will be able to obtain multiple bids for a rooftop solar project from various contractors, and each of them will have a different cost structure based on their business choices related to equipment procurement, customer acquisition, labor, and other overhead costs, including financing. These differences will inevitably lead to contractors quoting different prices. As a general matter, it seems problematic that the overhead costs specific to financing programs should be disclosed when no other such input overhead costs are. Instead, it would be more appropriate to treat all input costs as the contractor's confidential information. We look forward to engaging further with DOER on the dealer fee disclosure issue, and we would be glad to help arrange for more detailed input and background from our member companies.

One final area of concern for residential/small systems is the language at the bottom of the forms related to Renewable Energy Certificates (RECs). The purpose of the REC language next to the asterisk seems to be to address "green-washing" marketing issues, wherein business interests cannot claim the environmental attributes, the "green-ness," of the energy produced by a renewable system, because they do not own and retire the RECs. We generally agree with DOER that it is wise to inform customers about this issue and appropriate restrictions that may be related. The language in question, however, is confusing because of language that implies potential limitations on the broad concept of self-consumption, especially for residential rooftop (net metering) systems. The language states that customers "can make no claims that they utilized the solar power generated by the facility *to meet their electrical energy needs*, as the RECs generated by the facilities participating in the SMART program are the property of the utility company" (emphasis added). We expect DOER and other stakeholders would share our desire to avoid creating inadvertent issues with customer contracts and the broader net metering regime down the line, so we would advise that the REC language be modified to adopt a narrower construction. Specifically, we recommend the language below to clarify the intent of the note and limit any potential for misinterpretation.

"\*A Renewable Energy Certificate (REC) represents the Environmental Attributes associated with one megawatt-hour of renewable energy as defined by Massachusetts law. In signing a contract to construct this facility, the [end-use]<sup>2</sup> consumer can make no **public advertising or environmental benefit** claims that they utilized the solar power generated by the facility to meet their electrical energy needs, as the RECs generated by the facilities participating in the SMART program are the property of the utility company. **However, a consumer's participation<sup>3</sup> in the program does support solar development in Massachusetts.**"

NECEC recommends DOER make this narrow modification, and we look forward to further discussions on this issue.

### **Community Solar Customer Disclosure Form**

Regarding the draft Community Solar disclosure form, we have compiled the below recommendations and questions for the Department's consideration. NECEC notes that it would also support DOER's adoption of a modified disclosure form that is generic to the community solar program rather than specific projects or providers, which would direct customers to be

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<sup>2</sup> The modifier "end-use" is included in the third-party ownership disclosure form, but not the direct ownership form.

<sup>3</sup> For community shared solar participants, this language might be amended to read: "a consumer's purchase of credits supports solar development in Massachusetts."

aware of certain key terms and conditions in communications with their provider. Whatever option is chosen, the disclosure form should not be a roadblock to efficient and responsible sales practices by providers, and any disclosure form should provide for greater flexibility to refer directly to an underlying contract with customers, as applicable, which may more accurately describe unique product terms and conditions with individual providers.

### Specific Recommendations

#### *“System Information”*

Some members have expressed concerns about the field “Estimated Number of Subscribers to the Project.” Specifically, some are concerned that this field is extraneous/not relevant to a particular subscriber, and would furthermore be difficult to determine precisely due to the variation in off-take makeup on a project-to-project basis. For example, it would be difficult to certify in real time whether a project is going to be composed of 100% residential off-take or if a commercial/industrial (C&I) anchor customer may be identified late in the development cycle, for up to 50% of the off-take. The imprecision that would stem from estimations under this uncertainty, combined with the extraneous nature of the field for particular subscribers, would suggest that this field could be dropped from the disclosure form.

#### *“Subscription and Cost Information”*

In our members’ assessment, this portion of the disclosure form is more relevant for and directed at residential customers, leaving it far less relevant for large corporate customers/subscribers. For large corporate off-takers, provider contracts are typically complex and heavily negotiated by the counterparty. Some of our members are concerned that this portion of the disclosure form could be perceived to be in conflict with such a contract if it is not possible to reflect all contract terms in these selected fields. We would recommend an alternative approach for customers exceeding certain size criteria (e.g., a subscription size above a certain kW threshold). These alternative approaches might include: providing a separate disclosure form designed for larger, more sophisticated subscribers; making this section optional for larger subscribers; or allowing providers to simply refer to the contract in in this section, rather than attempting to replicate all contract terms in this section of the disclosure form.

#### *“Subscription Model”*

Some members have pointed out that this field should be able to accommodate multiple and combined subscription models for a given customer. The disclosure form as drafted does not contemplate the full range of pricing structures currently on the market, but rather assumes a fixed price with scheduled escalators. In instances where a developer would offer community shared solar participation as a “discount to market” (on a percentage basis) or as a fixed (x cent/kWh) discount to customers’ basic service-based credit, there is not a known price schedule that could be disclosed. Under such models, price and corresponding bill rates would vary based on changes in electricity rates, but customers will know that they will be saving money. We would strongly recommend DOER enumerate additional subscription models in the disclosure field and specify the ability for combinations thereof, clarifying to developers whether and how multiple subscription models can be reflected in completing this field.

#### *“Estimated Year One Credit Value”*

We would recommend that DOER provide additional guidance on how developers should calculate the Year One Credit Value. Clarification about how to estimate the value of net metering credits and alternative on-bill credits, which may vary based on supply and delivery

rate changes, at the time of the sale would be very valuable in promoting consistency across the industry/market.

#### *“Ownership of Incentives”*

Some members have pointed out that the “Ownership of Incentives” table may be confusing, as it does not list “Investor” as an owner option for federal investment tax credits (ITCs). In most community shared solar systems that are financed (as opposed to owned outright by the subscribers), a third-party investor will retain ownership of those credits. We would recommend that an additional option corresponding to “investor(s)” be added to the Ownership of Incentives table.

#### *“Owner of State/Local Tax Credits”*

It would be helpful if DOER could make available a list of such state and local tax credits that may be potentially available under the SMART program. This list would not necessarily be incorporated on the disclosure form, but it would be valuable to have as a reference as developers familiarize themselves with the disclosure forms.

#### Outstanding Questions

Our member companies provide the following questions for the Department’s consideration. We would ask that additional guidance and clarification on these issues be included in future iterations of the disclosure forms and/or in companion guidelines.

- To the extent a developer/provider may not know which project will be assigned to a customer at the point of executing the disclosure form, does DOER contemplate there being any ability to disclose or update the project name, location, and size at a later stage?
- If any adjustments or modifications to the information contained in the disclosure form are needed after the form has been executed by the provider and the customer, does the provider need to obtain customer acknowledgement? If yes, how/in what form?
  - For example: in fields using the term “Estimated,” such as Estimated Commercial Operation Date and Estimated Number of Subscribers, is it acceptable for the company to disclose their best estimate known to them at the point of contract execution? And if such estimates change post contract execution, does the updated response need to be communicated to the customer in formal documentation, perhaps requiring a further customer signature? We note that the challenge of filling out the “Estimated Commercial Operation Date” may be worsened due to unforeseen and unpredictable delays in interconnection upgrades, which depend on the utilities and cannot be reasonably estimated by the provider in most cases.
- Regarding the “Contract End Date” field, is it necessary to provide an actual date (MM/DD/YYYY), or would it be acceptable for providers to simply state “XX years from Production Start Date”?
- With respect to the “Starting Rate (\$/month, \$/kWh)” field, does DOER envision that other different product structures, such as index pricing, could or would be acceptable? For example, could providers indicate a bill discount in percentage form, or a certain

percentage of the output of a subscribers' portion of the community solar facility?

## **Conclusion**

NECEC appreciates the Department's consideration of these comments. We look forward to continuing to work with DOER and other stakeholders to continue refining and improving these disclosure forms, all for the benefit of customers across the Commonwealth. We would be glad to discuss any of our recommendations and questions with DOER in further detail and reiterate that we are available as a resource throughout the remainder of the SMART implementation process. Please do not hesitate to contact us if you have any questions or we can provide any assistance.

Sincerely,



Peter Rothstein  
President



Janet Gail Besser  
Executive Vice President

Cc: Jamie Dickerson, NECEC Policy Analyst