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Re: SMART Participant Customer Disclosure Forms

Dear Mr. Judge,

Thank you for the opportunity to comment on the Draft SMART Participant Customer Disclosure Forms. We're glad to see DOER make this effort. BPVS has long called for Massachusetts solar policy administrators to issue a consumer protection instrument whose disclosure contractors must attest to, and consumer must read and sign.

The first page of the draft (Direct Ownership) form is a bit ambiguous since it confounds Total Installed Cost before Incentive(s) and Final Purchase Price. We understand some contractors might have teaser incentives they offer or may list the tax credit as an incentive and in some scurrilous ways as a 'rebate' and amount due at a later date. This form's composition opens them up to using fake incentives to inflate the cost in the column Total Installed Cost before Incentive(s) and show as "Purchase Price" an amount much lower. We suggest you use one inquiry statement: "Total Contract cost and all costs, customer has paid at project completion?"

It would be better to ask the question: "Does the system installation contract conform to the requirements of the State Home improvement Contract Law" if one could be sure the consumer (and in many instances the contractor) knew Massachusetts Contract law.

Therefore we suggest this link be placed in this section:

<https://www.mass.gov/service-details/required-contract-terms-in-a-home-improvement-contract>

Rather than describe any project performance guarantees or special default remedies not required by law, perhaps the intent of the form would be better served by questions on whether the consumer is certain the contractor has the required types and coverage limits in Workers Comp. and Commercial General Liability Insurance. One could ask: "has the consumer received a copy of the Workers Compensation affidavit submitted with the building and the wiring permit applications?" or "has the consumer been issued a Certificate of Insurance from the contractor's agent?". You could go further and advise consumers that they should carefully examine and even challenge the contractor or their agent to prove the policy truly covers the activities of the solar installation and isn't a policy for some other trade- insulation or janitorial services for example.

BPVS agrees with the suggestion made by PV Squared in their comments that the roof question should be simply left at "Has the contractor discussed the roof condition and

procedures for removing the array when it comes time to re-roof”? In a similar vein especially in Massachusetts , “ Has the contractor discussed the soil conditions and the contingencies if there is ledge or a high water table found during foundation work for your pole or ground mount array?”

Others may suggest that you get rid of the roof question and other installation consequential questions altogether and we also would agree with that. Why not ask if there will be a NABCEP Certified PV professional conducting the site assessment and on site during construction?

KEY RESPONSIBILITIES CHECKLIST

The professional solar installer or developer is responsible for all these tasks. We suggest a disclaimer is noted below this table that states- “ If the customer column is checked for any of these responsibilities then the customer is the contractor and the installer is an amateur likely not licensed or carrying insurance .”

OWNERSHIP OF INCENTIVES

Our comments here will apply to all the form categories.

First, simply say Federal Solar Tax Credit or Federal Solar Investment Tax Credit; ‘Investment tax credit “ is the moniker used in commercial solar development circles. Second please see our comments of 3-27-2018 in the DPU Docket 17-140. It is important to disclose that income from the sale of RECs to a Utility may be considered taxable income by the IRS.

On the REC statement there are several issues. First the consumer may not know what a megawatt-hour is and so perhaps the first question to answer is: “what is the contractor’s estimate of how many RECs the system will produce annually?” The second consumer disclosure is a statement from DOER and/or the utility detailing what a Class 1 RPS REC is worth, at minimum and what the environmental attribute(s) might be worth. Another statement might be: “Neither DOER nor the Utility taking irrevocable ownership of the RECs and/or environmental attributes generated by your facility, know their exact dollar value until they are sold however they may be worth less than , equal to, or many times more than the SMART Incentive.”

After the phrase “defined by Massachusetts law” you really need to specify the MGL and CMR references. Some consumers like to check original source material.

“ In signing a contract to construct this facility” is a meaningful entry phrase that typically would be interpreted as the solar installation contractor or solar developer’s ‘contract’ being signed. But it is disingenuous and wrong to couple that as cause for the “claims “ warning. In signing the SMART Participation agreement the customer forfeits the RECS and/or environmental attributes to the utility, irrevocably for the ten year term. That is the cause or ‘trigger’, if you will, of the “no claims” warning shot. At this point in the form references should be made to the FTC Green Guides:

<https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-issues-revised-green-guides/greenguides.pdf> or the excellent guide from the VT Attorney Generals’ Office:
[http://www-assets.vermontlaw.edu/Assets/iee/Guidance%20on%20Solar%20Marketing%20\(ID%2085283\).pdf](http://www-assets.vermontlaw.edu/Assets/iee/Guidance%20on%20Solar%20Marketing%20(ID%2085283).pdf)

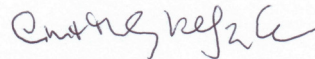
This Consumer disclosure form also should indicate that ownership of the RECs and/or environmental attributes become the consumers' again on a set date at the end of the term. There should be a further notification detailing how the consumer can find out where the RECs and/or environmental attributes from their facility were sold by their utility and for how much. Finally its' very important that consumers know which attributes they retain with the generation from their solar investment. Thus if a crypto currency is based on solar photons used for electricity generation the consumer should be informed he/she is free to mine , mint or transmute them at will for this type of derivative. It is not unlikely that other categories besides 'environmental attributes' will develop. Please see page 8 of our comments in DPU 17-140 on 'respiratory health attributes'.

Lets be clear on where the consumer disclosure on RECs and/or environmental attributes should be in program documents. First if there is a general brochure on the SMART program for all three Massachusetts Distribution Utilities participating, then a clear statement should be made there. Second, the statement should be made in bold print on any Participant's agreement and this Consumer Disclosure Form, which the customer signs. The former should very clearly state the action of "forfeiting the RECs and/or environmental attributes for the ten year term to the [named] utility is agreed to" by the consumer. Then the compliance tariff for each utility should also include this language.

This draft Consumer Disclosure Form series omits three broad categories: privacy of data, dispute resolution and penalties. It would be very instructive and beneficial for stakeholders to hold a technical conference on Consumer Disclosure. Neither the SPA, nor the Contractor, nor the Utility should be allowed to share data publicly or sell for non-programmatic purposes the personal data of participants. Dispute resolution issues should be obvious and once ground rules are in place for all parties the dispute process and penalties set. Please see our remarks on administrative accountability in the BPVS comments dated 3-27-2018 in the DPU SMART program docket 17-140.

Again thank you for the opportunity to make these comments. If the final version of the Consumer Disclosure Forms do not apply any of these suggestions it's important for DOER to explain why they were ignored and omitted.

Sincerely,



Christopher Derby Kilfoyle