



April 2nd, 2018

Judith Judson, Commissioner
Massachusetts Department of Energy Resources
100 Cambridge Street 10th Floor
Boston, MA 02116

Re: SMART Community Solar Consumer Disclosure documents

Dear Commissioner Judson:

I am writing on behalf of the Coalition for Community Solar Access (CCSA) to provide comments on the draft “SMART Participant Customer Disclosure Form: Community Shared Solar” released by the Department on March 12, 2018. CCSA is active across states with community solar programs and we are deeply involved in the development of customer disclosure forms in a number of those states. The draft form released by the Department is a strong foundation for a consumer disclosure form, but we suggest that the Department: 1) create an instruction document so that there is clear guidance on how the form should be completed; 2) clarify that large commercial customers do not need to be provided with a disclosure form or create a separate form that reflect the fact that these customers contracts are rarely standardized and won’t be fairly represented in the disclosure form; and 3) make modifications to the form, as outlined in our comments below, for better clarity, accuracy, and to reflect different community solar product offerings.

CLEARER GUIDANCE IS NEEDED FOR COMMUNITY SOLAR PROVIDERS AND SHOULD BE PROVIDED IN AN INSTRUCTIONS FORM

It is critical that a consumer disclosure form remain simple and be written in “layman’s” terms. At the same time, providers need clear directions on how the form is to be completed. Rather than making the form itself more prescriptive, the Department should consider a simple set of instructions for providers on when and how to use the form.

These clear instructions should include an explanation of when the form is supposed to be provided to the customer. We presume that this form will be provided to subscribers at the “point of sale” when a subscriber signs a community solar subscriber agreement. If this is the case, greater flexibility around project details will be needed to reflect how community solar projects are developed. The needed flexibility around the project location, size, etc. is described below in the section on changes to the “system information” section.

Given that changes to the subscriber agreement can occur between when a subscription is executed and a project comes on line, the instructions should describe instances in which customers should receive a revised form.



EXEMPT LARGE CUSTOMERS FROM RECEIVING THE FORM OR PROVIDE A SEPARATE AND SUBSTANTIALLY SIMPLIFIED FORM FOR COMMERCIAL AND INDUSTRIAL CUSTOMERS WITH SUBSCRIPTIONS OVER 25kW

In most jurisdictions creating consumer disclosure forms, large commercial customers are not required to receive disclosure forms. This is a reflection of two differences between small customers and large customers: 1) the large customers have the staff and capabilities to be much more sophisticated about their energy options and the contracts they enter into; and 2) contracts are often negotiated with unique terms for the particular customer to reflect their unique needs.

The clear intent of 225 CMR 20 is to provide disclosures for residential and small commercial customers, which strongly suggests that large commercial customers are exempt from the disclosure requirement. Indeed, under 225 CMR 20.06(1)(b)(4), projects sited at a customer's facility do not need to provide a disclosure if they are over 25kW. If DOER believes that large customers must be provided disclosures per 225 CMR 20.06(h), then a separate and dramatically simplified form is needed to reflect the numerous non-standard terms these customers are likely to have in their contracts and the innumerable combinations of different terms that will be possible to be disclosed in a form.

REVISIONS TO THE DISCLOSURE FORM

Our comments follow the layout of the form, moving from the top of the form to the bottom of the form. We suggest modifications that are mirrored in the redline version of the form appended to these comments.

I. Customer Information

- **Terms in the customer information section need to be clarified:**
 - **“Customer ID”:** It is our understanding that this is meant to mean the customer's electric distribution utility account number and have revised the form to reflect that.
 - **“street” address should be “service address”:** The subscriber's mailing address or one of their residences may be different than the address for which the customer is establishing a subscription.

II. Provider information

- The preparer's name can be moved to the top of the form. The subscriber organization's information, including logo, should be provided in the header.

III. System Information

- **Flexibility on project disclosures is needed to reflect the community solar project development cycle and customer preferences**



We suggest community solar providers be permitted to indicate that customers will be notified about this information once they are assigned to a particular project, and in our revisions to the form we have provided a box that can be checked to indicate that. This flexibility is needed to reflect customer preferences and the community solar project development cycle.

Community solar projects typically take two years or more to be developed. Many community solar providers will have several projects underway for which a prospective customer is eligible. Particularly for smaller customers, it is inconvenient and frustrating to have to wait long periods of time for a project to come online. Therefore, it is a common practice for community solar providers to subscribe a customer to their program and then assign them to whatever applicable project is the first to be available. In order to accommodate this common practice, providers should have the option to provide the information on the specific project via written notice once a project nears commercial operation and the subscriber is assigned to that project.

- **“Estimated Number of Subscribers to the Project” should be struck from the form**

The number of subscribers subscribed to a project is dependent on the estimated subscriber electric consumption, for an assumed aggregate number of subscribers. These variables are very difficult to determine and prepare before launching a sales effort to enroll customers for a project. Further, we question whether this information is material or useful to customers. While it may be possible for a community solar to provide a range of the number of estimated subscribers (e.g. 5-100, 500-1,000), the scope of this range would likely need to be very broad in order to be accurate and therefore would present limited value to customers.

IV. Subscription and Cost Information

- **Clarify and simplify the subscription price disclosures to make them more accessible to customers and more flexible for different business models.**

It is ambiguous what “Starting Rate” and “Rate Increase Frequency” refer to. We assume these mean the initial subscription price (\$/kWh) that a customer will need to pay and the amount by which this subscription price is scheduled to increase (i.e., an escalator). If the goal is to outline the subscription price along with any applicable price increases over the course of the agreement, we recommend combining the sections on “Starting Rate,” “Rate increase frequency,” and “Amount of Rate Increase” into one section on “Subscription Pricing” with instructions to community solar providers that specifies that the initial rate, as well as any applicable escalator or other increases should be identified.

Such a section, as proposed in the revised disclosure form attached, would be less confusing and would accommodate other subscription pricing models, such as one where customers pay a certain percentage of the bill credit value to the subscriber organization rather than a \$/kWh rate.



- **Clarify what contract end date formats are permissible**

In the instructions to community solar providers proposed in these comments, we request that DOER clarify that the contract end date does not need to be a specific calendar date (e.g., January 31st, 2030) but instead allow for the end date to be specified in other terms such as “20 years from the commercial operation date of the project”.

- **Clarify the section on termination terms to specify that it is a section for disclosing early termination and cancellation terms**

In the “Subscription and Cost Information” section there is a section to “Describe opt-out or early termination terms and protections for the Participant in terms of ongoing project performance or default by the Provider.” This is confusing because it references multiple potential terms of the agreement: opt-out and early termination terms; ongoing project performance terms; and potential default by the provider. The ongoing project performance terms and terms governing the default of the provider are likely to be more detailed and it would be difficult to summarize or present these terms in “disclosure” terms. More importantly, of these terms, we believe the most important and directly applicable to customers is what, if any, penalties may apply for early termination or cancellation of the agreement. Therefore, we recommend that this section be revised to “Early Termination and Cancellation Terms.” The instructions to community solar providers should make clear that any fees associated with early termination or cancellation should be disclosed here.

- **Clarify the savings disclosures and allow providers to specify that they do not guarantee savings**

Bill savings are a key element of the typical community solar value proposition and care must be taken to make sure that estimates are reasonable. To this end, clearer guidance on expectations for different disclosures about bill savings are needed, specifically:

- i. The “Estimated Year One Credit Value” – This value depends on two variables, first the facility assignment in a specific utility, which may not be known at the time of the subscriber executing an agreement and, second, how “year one” is defined. A definition of these terms and expectations for this calculation is needed and could be provided to providers in the proposed instructions form. The form could clarify whether providers expected to estimate Commercial Operations Date and forecast the Utility Bill Credits for the 12 months thereafter for “year one” or follow some other methodology.
- ii. Estimated Year One Savings – Is this savings rate the Utility Bill Credit (gross) Savings or Net Savings after including payment to the providers? We expect it is the latter and have clarified the form to reflect that.
- iii. Community solar providers should be permitted to specify that they do not guarantee savings



V. Ownership of incentives and Renewable Electricity Certificates

Understanding renewable electricity certificates, incentive programs such as SMART, and the federal tax code are difficult enough in themselves, let alone understanding who can claim rights to different incentives and environmental attributes. What is relevant to the subscriber is information that allows them to know their claims to the attributes, SMART incentives, and to tax credits.

It is neither helpful nor necessarily accurate to disclose whether a community solar provider is taking the tax credits. Indeed, the community solar provider may not be the owner of the project and, even if the organization owns the project, a financier of the project may be the owner of the tax credits. What is relevant to a subscriber is whether or not they can claim a credit on their taxes or whether they should expect to receive SMART incentive payments. To this end we suggest the incentives table be replaced with a simpler and clearer table that outlines explicitly whether the customer will receive the SMART incentive and be eligible for tax credits. This answers clearly the questions the customer will have: “will I receive a payment from the SMART program?” and “can I claim this system on my taxes for a deduction?” In the revised disclosure form attached, we have replaced the table on incentives with clear declarative statements on whether the customer can claim tax credits and the SMART incentive.

Since this form is being used for the SMART program, none of the participating customers will have the ability to claim environmental attributes of the generation from the projects, which are claimed by the utility under the SMART program. Because it will be invariant across SMART projects, the ownership of RECs by the utilities is better disclosed as a clear statement rather than being part of the checklist provided in the same form.

Regarding the proposed statement on Renewable Energy Certificates, we believe it’s important to simplify this statement to be more readily understood by customer. We suggest the following:

“A Renewable Energy Certificate (REC) represents the Environmental Attributes associated with one megawatt-hour of renewable energy as defined by Massachusetts law. RECs generated by the facilities participating in the SMART Program are the property of the utility company. Therefore, while you are not using the solar power generated by the facilities, your purchase of credits does support solar development in Massachusetts”.

VI. Signatures



- **Clarify in Guidance to Community Solar Providers that Electronic Signatures are Permissible**

The form was released by DOER as a Microsoft Word document, but it is not clear whether this form needs to be presented to a customer on paper and whether a wet signature is needed or whether the form can be signed electronically. We strongly recommend that electronic signatures be admissible as it allows community solar providers to more easily send and execute this disclosure form with subscribers.

- **Remove the preparer signature line**

While it is clear in 225 CMR 20.06(1)(h) that the “Customer of Record” must sign the form, there is no requirement that the subscriber organization provide a signature. It is problematic to have the preparer of the form sign the form. The individual acting on behalf of the subscriber organization as its agent by preparing the disclosure form will not ultimately be responsible for ensuring that the agreement is upheld by the company. Having many different individuals’ signatures across forms generated by a company can create complications for financiers. Requiring a preparer’s signature also complicates the ability of a customer to sign up online since, in that case, an individual may not be preparing the form.

Thank you for consideration of these comments. Please contact me if you have any questions. I can be reached at brandon@communitysolaraccess.org or 978-869-6845.

Sincerely,

A handwritten signature in black ink, appearing to read "Brandon Smithwood", written over a light blue background.

Brandon Smithwood
Policy Director
Coalition for Community Solar Access



SMART Participant Customer Disclosure Form (Community Shared Solar)

The purpose of this form is to provide consumers with a straightforward, uniform, and transparent resource to evaluate potential solar transactions under the Solar Massachusetts Renewable Target (SMART) Program. Community Shared Solar Participants do not directly purchase solar electricity. Instead, participants purchase credits in the form of Net Metering Credits or Alternative On-Bill Credits, which ~~may or may not are intended to~~ reduce customers' total electricity costs ~~depending on market conditions~~.

Preparer Name (if applicable): _____

CUSTOMER INFORMATION	PROVIDER INFORMATION
Customer ID Customer Distribution Utility and Account Number:	Company:
Customer Name:	Preparer Name:
Street Service Address:	Street Address:
City, State, Zip:	City, State, Zip:
Phone:	Phone:
Email:	Email:
SYSTEM INFORMATION	
Community Solar Project Name:	
Project Location (City/Town):	
Project Size (kW AC or DC (circle one)):	
Estimated Commercial Operation Date:	
Estimated Number of Subscribers to the Project:	
<input type="checkbox"/> You are not assigned to a specific project at this time. [Community Solar Provider] will provide you with specific project information by letter or email once you are assigned to a project	
SUBSCRIPTION & COST INFORMATION	
Subscription Size (kW AC or DC (circle one)):	
Subscription Model (Upfront payment, pay as you go, or other):	
Contract Effective Date:	
Contract End Date:	
Cost of Cancellation (\$):	
Option to renew: Yes or No	

[Subscriber organization name, address, logo, phone and email placed in header]

Upfront Costs (\$):
Starting Subscription Rate (\$/month, \$/kWh): Subscription Rate:
Subscription Rate increase frequency (Monthly, quarterly, annually, etc.):
Amount of Subscription Rate Increase (\$/month, \$/kWh, percentage):
Estimated Year One Bill Credit Value (\$):
Estimated Year One Net Savings (\$):
Is the subscription transferrable to other customers? Yes or No
Is the subscription portable Can the customer keep their subscription if they move within the utility service area or utility load zone? Yes or No
Describe opt-out or early termination terms and protections for the Participant in terms of ongoing project performance or default by the Provider: Early Termination and Cancellation Terms:

OWNERSHIP OF INCENTIVES	PROVIDER	CUSTOMER	UTILITY	N/A
Owner of SMART Incentive Payments				
Owner of Associated RECs*			X	
Owner of Investment Tax Credit				
Owner of State/Local Tax Credits				

INCENTIVES	YES	NO
Will the customer receive SMART program incentive payments?		
Is the customer eligible to Claim Federal Tax Credits for their community solar project subscription?		
Is the customer eligible to claim state or local tax credits for their community solar project subscription?		

[Subscriber organization name, address, logo, phone and email placed in header]

Renewable Energy Certificates

A Renewable Energy Certificate (REC) represents the Environmental Attributes associated with one megawatt-hour of renewable energy as defined by Massachusetts law. ~~In purchasing credits from a solar the facilityies~~ participating in ~~under~~ the SMART Program, ~~the consumer 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. ~~Therefore, while you are not using the solar power generated by the facilities, your purchase of credits does support solar development in Massachusetts~~

I, _____, hereby confirm that I have received and understand the above information. I further confirm that I have had a chance to ask questions of my provider and have received sufficient answers, if applicable.

Customer Signature

Date

~~I, _____, hereby confirm that I have fully explained the above information to the customer and answered any questions that the customer may have had completely and truthfully, to the customer's satisfaction. I certify that the above information is true and accurate to the best of my knowledge.~~

~~_____
Provider Signature~~

~~_____
Date~~