



March 30, 2018

SENT VIA ELECTRONIC MAIL

Michael Judge, Renewable Energy Division Director  
Massachusetts Department of Energy Resources

Re: SMART Customer Disclosure Forms

Dear Mr. Judge:

Sungage Financial appreciates the opportunity to submit comments on the proposed SMART customer disclosure forms. The Department of Energy Resources (“DOER”) has created new customer disclosure forms that must be completed and presented by an installation contractor in order for their customer to be eligible for a SMART incentive. As a financial services company that is dedicated to supporting residential solar and takes seriously our responsibilities related to consumer protection and compliant lending practices, Sungage Financial applauds the DOER’s desire to create more transparency within the solar market and to help customers make more informed purchase decisions. Therefore, we support the concept of standardized disclosure forms. We believe that the disclosure regarding year one energy production and savings would be particularly helpful; however, we recognize that there could be differences in how these numbers are calculated by various solar companies. As such, we encourage the DOER to work with various stakeholders in order to define a methodology for calculating these figures, which will ensure consistency across solar companies. Also, to the extent feasible, we recommend that the DOER dialogue with the California Contractors State Licensing Board, which is currently developing and implementing a ‘solar energy system disclosure document’ pursuant to AB 1070 that standardizes the calculation and presentation of electric utility bill savings for consumers. We believe that developing objective methodologies for consumer solar value proposition calculations that are the same across state borders is ideal and would best support the solar industry in all markets.

Although we generally support the DOER’s desire for more solar customer disclosures, we are concerned about a specific provision in the proposed forms. The draft form for the small system (direct ownership) customer 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’. Under the terms of our agreement, a contractor may not surcharge a customer to cover the cost of any dealer fees. In addition, the contractor is prohibited from disclosing the fees. Given this legal structure, the fees are not considered finance charges under the Regulation Z (see 12 CFR §1026.4) and as such are not included in a truth-in-lending disclosure. These contractual prohibitions are necessary to allow us to reliably comply with Reg. Z. Since we believe that many finance companies have similar contractual provisions, requiring disclosure of the dealer fees would create a broad regulatory compliance challenge and legal problem for the solar industry.

Furthermore, depending on when the SMART customer disclosure is presented, disclosing the dealer fee 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 its purpose), it could actually misinform consumers.

Finally, the dealer fee disclosure requirement is inconsistent with normal lending practices in retail finance. For example, if one were to purchase furniture from a retailer that included a four-year 0% interest installment option, the retailer would almost certainly not disclose how much it is paying a finance company to offer this financing plan. Rather, the retailer might actually consider this a commercially-sensitive trade secret. Consumers are able to procure multiple bids for a solar project from various contractors, each of which will have a different cost structure (based on their business choices related to equipment procurement, customer acquisition, labor, and other overhead costs, including financing) and therefore will quote a different price. It seems problematic that the overhead costs specific to financing programs should be disclosed when no other input costs are. Instead, we believe that all input costs should be considered the contractor's confidential information.

In summary, while we favor better solar customer disclosures, we are interested in seeing consistency in how figures are calculated. We are also concerned that including a dealer fee disclosure requirement could lead to regulatory compliance challenges for solar installers and finance companies, more customer confusion, and less choice for consumers. We thank you for your consideration and look forward to assisting the DOER in creating a vibrant solar industry in Massachusetts.

Sincerely,



Sylvain Mansier, President  
Sungage Financial