

May 29, 2020

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

Re: Comments on the SMART Program Emergency Regulations

Dear Commissioner Woodcock,

SWEB Development USA, LLC (SWEB) would like to commend the Department of Energy Resources (DOER) on their effort in developing the SMART Program (Program) emergency regulations and their commitment to working with stakeholders to continue to strengthen the Program. SWEB is pleased to submit these formal comments in response to the Program's emergency regulations which were filed on Tuesday April 14, 2020. SWEB is also a member of SEBANE and fully supports the comments that they will be submitting.

1. Program Size

SWEB is pleased to see that the DOER has doubled the size of the Program to 3,200 MW of new solar generating capacity. This increase is a direct solution to the challenge the solar industry faces in reaching the State's renewable energy goals.

2. Base Compensation Rate Decrease

The Program was original designed to last 5 years with 1,600 MW of capacity available. However, the majority of the 1,600 MW were filled in under 1 year, capping out available capacity in all but one Electric Distribution Company territory. The Base Compensation Rate decrease of 4% between each block was meant to occur at a much more gradual rate to allow for the market to catch up. This is not reflective of reality. The Program is moving at an unprecedented speed and is drawing more solar projects to Massachusetts. As a result of this, interconnection costs have significantly increased, and have put further pressure on installation and material costs. Additionally, supply chain breakdowns due to the COVID-19 virus are further increasing project costs. The current decrease in Base Compensation Rates also does not take the reduction of federal tax incentives, and higher financing costs into consideration.

Ground-mounted solar is the most effective way to produce solar generation and is currently being disincentivized by the DOER due to the Base Compensation Rate decline. At a time when the solar

industry in Massachusetts is hurting, having lost thousands of jobs due to the COVID-19 virus, it is our responsibility to encourage economic growth in the renewable energy sector.

As such, SWEB recommends that the Base Compensation Rates do not decrease after Block 8. This stabilization of Base Compensation Rates is vital to ensuring that Solar Tariff Generation Units (STGUs) in later Blocks are able to pencil out given the fundamentally higher costs to develop and construct projects.

3. Public Entity Solar Tariff Generation Unit Adder

SWEB is pleased to see the Public Entity Solar Tariff Generation Unit Adder Value has been increased from \$0.02/kWh to \$0.04/kWh. However, SWEB recommends that this Adder not be subject to the 4% decrease in compensation between Tranches. Currently, the Public Entity Solar Tariff Generation Unit Adder is the lowest allocated Off-taker Based adder in the Program with only 23.58 MW allocated as of May 26th, 2020. Similar to the Location Based Adders, SWEB believes that maintaining the Public Entity Solar Tariff Generation Unit Adder at the same value throughout the Program's entirety will incentivize developers to work with Public Entities and will further increase the Adder's allocation.

4. Public Entity Definition Expansion

Public Entity Solar Tariff Generation Unit is defined as:

A Solar Tariff Generation Unit that is:

- (a) Sited on property owned by a Municipality or Other Governmental Entity and is either:
 - (i) owned or operated by a Municipality or Other Governmental Entity; or*
 - (ii) the Owner has assigned 100% of its output to Municipalities or Other Governmental Entities; or**
- (b) Sited on privately owned property and is either:
 - (i) Owned or operated by the Municipality in which the Solar Tariff Generation Unit is sited; or*
 - (ii) the Owner has assigned 100% of its output to the Municipality or Other Governmental Entities in the Municipality in which the Solar Tariff Generation Unit is sited.**

The definition was expanded to include STGUs sited on privately owned property. However, Developers still need to go through the rigorous procurement process under Massachusetts General Laws, c. 30B § 16 to be awarded a Lease-Only project on Municipal or Other Governmental Entity land(s). Additionally, many Municipalities and Other Governmental Entities already have long term offtake agreements in place making 100% offtake to the Public Sector extremely difficult. As such, SWEB recommends that the DOER further expands their definition of Public Entity to include Lease-Only STGUs which are sited on Municipal or Other Governmental Entity land(s).

5. Special Provisions for Public Entity Solar Tariff Generation Units

225 CMR 20.06(1)(l) Special Provisions for Public Entity Solar Tariff Generation Units states:

“A Public Entity Solar Tariff Generation Unit may apply for a Statement of Qualification pursuant to 225 CMR 20.06 (1)(c) by providing satisfactory evidence to the Department that a Municipality or Other Governmental Entity has awarded a contract to develop a Solar Tariff Generation Unit.”

However, 225 CMR 20.06 (1)(c) Required Documentation for Solar Tariff Generation Units with Rated Capacities Larger than 25 kW states:

“All Generation Units with a capacity larger than 25 kW must provide evidence of the following in order to obtain a Statement of Qualification:

- 1. an executed Interconnection Service Agreement, as tendered by the Distribution Company;*
- 2. demonstrate a sufficient interest in real estate or other contractual right to construct the Solar Tariff Generation Unit at the location specified in the Interconnection Service Agreement; and*
- 3. all necessary governmental permits and approvals to construct the Solar Tariff Generation Unit with the exception of ministerial permits, such as a building permit, and notwithstanding any pending legal challenge(s) to one or more permits or approvals.”*

The special provision in 225 CMR 20.06(1)(l) needs to be clarified in regard to its relationship to 225 CMR 20.06 (1)(c). If a Public Entity Solar Tariff Generation Unit has been awarded a contract to develop an STGU by a Municipality or Other Governmental Entity, this contract award alone allow the STGU to qualify for a Statement of Qualification. However, if the contract award alone allows the STGU to qualify then will the Initial Reservation Period be for a longer term? The Initial Reservation Period of 12 months will not provide enough time for projects to receive permits, an Interconnection Services Agreement, and complete construction.

Furthermore, many Public Entity Solar Tariff Generation Units are located on landfills. If the special provision in 225 CMR 20.06(1)(l) allows a contract award alone to qualify an STGU for a Statement of Qualification, then the Adder Eligibility and Qualification in the Statement of Qualification Reservation Period Guideline needs to be updated.

SWEB recommends the DOER post a specific guideline about the Special Provisions and the criteria necessary for Public Entity Solar Tariff Generation Units to apply for Statement of Qualifications.

6. Energy Storage Mandate and Adder

225 CMR 20.05(5)(k) Energy Storage Requirement states:

“Solar Tariff Generation Units greater than 500 kW applying for a Statement of Qualification for any available capacity in any capacity block available after the Publication Date must be co-located with an Energy Storage System that meets the eligibility requirements for an Energy Storage Adder pursuant to 225 CMR 20.06(1)(e).”

SWEB commends the DOER for enacting regulation that drives developers to meet the State’s energy storage goals. However, SWEB strongly recommends that the Energy Storage Adder Tranche sizes are either significantly increased, or the Energy Storage Adder Multiplier decrease between Adder Tranches is eliminated.

The DOER has stated that Adders will last the length of the Program. Currently (as of May 12th, 2020) 369.053 MW have been allocated to the Energy Storage Adder with 10.665 MW pending. Given 225 CMR 20.05(5)(k), this means an additional ~250 MW from Blocks 4 – 8 (Eversource East remaining \geq 500 kW capacity) and ~650 MW from Blocks 9 – 16 will be required to have Energy Storage. These values total ~1280 MW of which have or will require Energy Storage. This does not include the ~206 MW of capacity from projects \leq 500 kW, or low income remaining in Eversource East Blocks 4 – 8 or the ~670 MW of capacity from projects \leq 500 kW, or low income remaining in Blocks 9 - 16 which can opt-in for Energy Storage (~876 MW total).

Using the conservative number of 1280 MW and dividing it by 80 MW Tranches, it produces just over 16 Tranches. The adder multiplier by Tranche 17 is 0.0234 which is 52% of the adder multiplier value for the Energy Storage Adder Tranche 1 which was 0.0450.

Based on 225 CMR 20.05(5)(k), the DOER is now asking developers to finance and construct STGUs that will not only need to compete with lower Base Compensation Rates, but are also contending with lower the Energy Storage Adder values as well. These total compensation values will not be sufficient for the additional costs of adding Energy Storage and will cause future projects to not pencil out. Furthermore, in reducing the Energy Storage Adder multiplier each Tranche, the DOER is blatantly disincentivizing a regulation that they have mandated and are prohibiting and preventing solar development, therefore directly contradicting the State’s renewable energy generation and storage goals.

7. Ineligible Land

225 CRM 20.05(5)(e)(7)(c) Ineligible Land Use states:

“Solar photovoltaic Generation Units that meet or one or more of the following criteria shall not be eligible to qualify as Solar Tariff Generation Units under 225 CMR 20.00:

- 1. One or more of the criteria established in 225 CMR 20.05(5)(e)5; or*
- 2. Solar Tariff Generation Units sited on land designated as Priority Habitat, Core Habitat or Critical Natural Landscape, that do not meet the criteria of Category 1 Land Use.*

3. Solar Tariff Generation Units sited on a parcel with 50% or more of its area designated as Priority Habitat, Core Habitat and/or Critical Natural Landscape, that do not meet the criteria of Category 1 Land Use.”

SWEB understands the importance of protecting Priority Habitat, Core Habitat, or Critical Natural Landscapes within the State. However, the provisions enforced by 225 CRM 20.05(5)(e)(7)(c) are extremely restrictive and do not incentivize constructive land use siting.

There are significant issues in terms of the availability of appropriate land for solar generation within the State that developers are currently facing. There is physically not enough appropriate Category 1 Agricultural and Category 1 Non-Agricultural land available for solar generation within the State to meet the solar installation goals. Furthermore, many Municipalities have stringent zoning constraints which make solar development even more challenging when added to the physical lack of Category 1 land. This means that developers must greenfield projects throughout the State in Category 2 and 3 Land Uses.

Through 225 CRM 20.05(5)(e)(7)(c), the DOER further restricts the land availability for solar development. These provisions also do not take siting for interconnection into consideration. There is a dichotomy between the land the DOER is compelling the developers to use and the sites which are appropriate for solar development with minimal interconnection costs.

Please see below for two screenshots of the BioMap2 from the Natural Heritage and Endangered Species Program (NHESP) which provides an overview of the Core Habitat and Critical Natural Landscape of the Southeast Region of Massachusetts (SEMA).



Figure 1 - BioMap2 Overview - SEMA

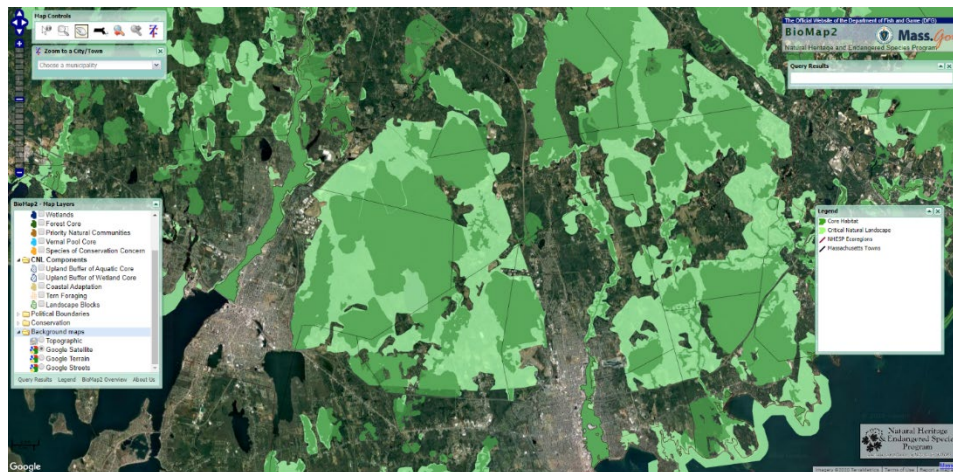


Figure 2 - BioMap2 Concentrated Area of SEMA

As can be seen from the larger area screenshot, a significant portion of land in SEMA is covered by Priority Habitat, Core Habitat, or Critical Natural Landscapes. Moreover, as can be seen from the more concentrated screenshot, the areas which are not covered by Priority Habitat, Core Habitat, or Critical Natural Landscapes in SEMA are residential or urban areas that will have more stringent zoning or would not be appropriate for solar development, specifically ground mounts.

As stated, in enacting the provisions of 225 CRM 20.05(5)(e)(7)(c), the DOER is restricting land use siting to a degree that is prohibitive for further solar development. This is especially true in SEMA, where generation and solar development are desperately needed. Furthermore, the Eversource MA East territory which overlaps with SEMA is the least allocated Electric Distribution Company territory, with over 465 MW of remaining capacity across both large and small projects (as of May 12th, 2020) for Blocks 1 – 8 of the Program.

The third provision in 225 CRM 20.05(5)(e)(7)(c) is deficient as it does not correctly take parcel sizing into consideration. The provision states that “*Solar Tariff Generation Units sited on a parcel with 50% or more of its area designated as Priority Habitat, Core Habitat and/or Critical Natural Landscape, that do not meet the criteria of Category 1 Land Use*” will be deemed ineligible for a Statement of Qualification. To illuminate this provision’s deficiency, take the example of two parcels into consideration; one is 40 acres in size, the other is 120 acres in size. The parcels have the same Priority Habitat area which covers them. The Priority Habitat area covers 5 acres of the 40 acre parcel, and another 65 acres of the 120 acre parcel. Based on the third provision in 225 CRM 20.05(5)(e)(7)(c), there are no issues with the 40 acre parcel, but the 120 acre parcel would be deemed ineligible land despite still having 55 acres of useable land to develop a project, more than the entirety of the 40 acre parcel.

The Critical Natural Landscape coverage comprises over 1.9 million acres. Massachusetts is only comprised of 6.76 million acres. As such, the Critical Natural Landscape covers over 28% of the State. SEIA estimates that over 475 MW of projects would be obsolete if 225 CRM 20.05(5)(e)(7)(c) were to

remain in regulation. The BioMap2 layers also overrule Municipal zoning and regulation of solar projects, and hurt Massachusetts landowners and Towns that heavily rely on lease and tax payments from solar projects.

The BioMap2 layers were never intended to be used as a regulatory tool for development. Furthermore, the DOER did not include these ineligible land use criteria in their STRAW proposal, nor did the DOER provide any stakeholder engagement, working or technical sessions, or comment periods prior to publishing these land use regulations which have a substantial impact on the development of numerous projects across the state.

SWEB recommends that the second and third provisions from 225 CRM 20.05(5)(e)(7)(c) be removed and replaced with a provision that states that if STGU parcels fall within a Priority Habitat, Core Habitat and/or Critical Natural Landscape zone, they will be evaluated on a case by case basis. SWEB also recommends that an additional provision be added which states that projects which have been granted No-Take or No-Take with Conditions Determinations from the NHESP prior to the Publication Date should be immediately grandfathered into the old Land Use and Siting Criteria and be eligible for Statements of Qualification.

SWEB understands that a case by case review of STGU parcels which fall within a Priority Habitat, Core Habitat and/or Critical Natural Landscape zone can be burdensome on the DOER and Solar Program Administrator. As an alternative, SWEB recommends that a new subcontractor be established. However, if the DOER opts for this recommendation, SWEB recommends that an additional provision be added which states that projects which have been granted No-Take or No-Take with Conditions Determinations from the NHESP prior to the Publication Date should be immediately grandfathered into the old Land Use and Siting Criteria and be eligible for Statements of Qualification.

8. Greenfield Subtractor

Under 225 CRM 20.07(4)(g) Greenfield Subtractors, the subtractors for both Land Use Categories 2 and 3 have been increased by 250%. These subtractor value increases are substantial and put a further burden on project development in an increasingly restrictive environment. Furthermore, the subtractors over-penalize and segregate rural areas. SWEB recommends that the subtractor values for Category 2 and Category 3 Land Use return back to their values from before the Publication Date of \$0.0005/kWh and \$0.001/kWh, respectively.

9. Community Shared Solar Adder

SWEB commends the DOER for enacting regulation that drives developers to promote Community Shared Solar (CSS). However, SWEB strongly recommends that the CSS Adder Tranche sizes are either

significantly increased, or the decrease in compensation rates between CSS Adder Tranches is eliminated.

The CSS Adder is the highest allocated Adder in the Program with ~ 600 MW of allocated capacity and ~17.8 MW of pending capacity as of May 12th, 2020. This means that the CSS Adder is in Tranche 11 with a rate of \$0.03324/kWh. The Tranche 11 rate is only two-thirds of the value of the \$0.05/kWh rate from Tranche 1.

Furthermore, CSS sales have taken a significant hit or been halted completely due to the COVID-19 virus. To ensure that CSS customer acquisition continues, more time and resource intensive methods must be employed. Developers are now competing with CSS Adder rates that will not be sufficient for the additional costs of CSS customer acquisition and maintenance and will cause future projects that wish to provide CSS to not pencil out.

10. Terminations/ Expiration of Reservation Period

As stated in the Statement of Qualification Reservation Period Guideline, if an STGU which has qualified and been allocated a Preliminary Statement of Qualification terminates its project or its Reservation Period Expires, then the capacity that the STGU had previously reserved will be removed from its qualified Block and will be assigned to the current Capacity Block. SWEB recommends that any STGUs which terminate their projects or do not meet the Reservation Period timelines are made public. This information should include the size of the STGU, what Base Compensation Rate Block and Territory was allocated, as well as any Adder compensation rates it received, in addition to what current Blocks and Adder Tranches will be impacted.

11. Initial Reservation Period

The Initial Reservation Period for Project Implementation is currently 12 months from the issuance date of the Statement of Qualification. However, the 12-month period will not be long enough to manage the significant impacts the COVID-19 virus has had on supply chain issues or the significant increases in construction timelines from the Electric Distribution Companies. It is detrimental for a project to be mechanically complete but not generating due to delays based on the construction and upgrades needed for the grid. As such, SWEB recommends that the Initial Reservation Period be extended to 24 months.

12. Grandfathering Language

The solar development industry in Massachusetts is currently in the midst of a development cycle based on the regulations which were published at the beginning of the Program. To update the requirements for projects to qualify for a Statement of Qualification and retroactively apply these regulations to mature projects is reckless and inconsiderate.

SWEB recommends that mature projects, and projects which have been impacted by National Grid's or Eversource's ASO Studies be grandfathered into the old land use siting and criteria and not be forced to include energy storage if over 500kW. A mature project would be classified as any project which has land control and can show proof of substantial development work through the application or receipt of non-ministerial permits, or receipt of System Impact Study, etc. prior to the Publication Date.

Project siting has been tricky for many of the mature projects, and non-ministerial permits are approved based on those footprints. Adding energy storage now would jeopardize those permits, increasing permitting costs, and would also put a further delay on the already congested interconnection queues. Furthermore, energy storage has not been considered by some Municipalities. We need to give the Town Boards time to adapt their bylaws to this new technology before enforcing it.

Conclusion

In summation, SWEB recommends the following:

1. The Base Compensation Rates do not decrease after Block 8.
2. The Public Entity Solar Tariff Generation Unit Adder is not subject to the 4% decrease in compensation between Blocks.
3. The DOER further expands their definition of Public Entity to include Lease-Only STGUs which are sited on Municipal or Other Governmental Entity land(s).
4. The DOER posts a specific guideline about the Special Provisions and the criteria necessary for Public Entity Solar Tariff Generation Units to apply for Statement of Qualifications.
5. The Energy Storage Adder Tranche Sizes are either significantly increased, or the Energy Storage Adder Multiplier decrease between Adder Tranches is eliminated.
6. The second and third provisions from 225 CRM 20.05(5)(e)(7)(c) be removed and replaced with a provision that states that if STGU parcels fall within a Priority Habitat, Core Habitat and/or Critical Natural Landscape zone, they will be evaluated on a case by case basis, or a new subcontractor be established. In both cases an additional provision should be added which states that projects which have been granted No-Take or No-Take with Conditions Determinations from the NHESP prior to the Publication Date should be immediately grandfathered into the old Land Use and Siting Criteria and be eligible for Statements of Qualification.
7. The Greenfield Subtractor values for Category 2 and Category 3 Land Use return back to their values from before the Publication Date of \$0.0005/kWh and \$0.001/kWh respectively.
8. The CSS Adder Tranche sizes are either significantly increased, or the decrease in compensation rates between CSS Adder Tranches is eliminated.
9. STGUs which terminate their projects or do not meet the Reservation Period timelines are made public.
10. The Initial Reservation Period be extended to 24 months.

11. Mature projects, and projects which have been impacted by National Grid's or Eversource's ASO Studies be grandfathered into the old land use siting and criteria and not be forced to include energy storage if over 500 kW.

Thank you for your continued effort on the SMART Program and solar in Massachusetts. SWEB appreciates the opportunity to provide comments to the DOER on the Program's emergency regulations and hope that you will take them under serious consideration. We are ready to provide any required additional information and look forward to participating in further discussions on these topics.

Kind regards,



Rory Cantwell
Chief Business Development Officer
SWEB Development USA, LLC



Sarah Rosenblat
Development Manager
SWEB Development USA, LLC