



June 1, 2020

Commissioner Patrick Woodcock
Massachusetts Department of Energy Resources
100 Cambridge Street Suite 1020
Boston, MA 02114

Re: Comments on the SMART Program Emergency Regulations

Dear Commissioner Woodcock:

BlueWave Solar appreciates the opportunity to comment on the proposed emergency regulations the Department of Energy Resources (the Department) issued as part of the SMART 400 MW review process. Thank you for your engagement and accessibility throughout the development, administration, and review of the SMART program. We welcome further collaboration in the interest of deploying accessible, clean energy across the Commonwealth and together meeting our emissions reductions and renewable energy goals.

BlueWave is a community solar developer and services provider, which co-developed the first community solar projects in Massachusetts and continues to innovate for the benefit of our customers, landowners, and communities. BlueWave has developed over 135 MW of community and public solar and currently has a pipeline of over 40 MW of dual-use agriculture projects in Massachusetts. BlueWave currently manages approximately 1,500 SMART customers on community solar projects in Massachusetts. In total, BlueWave delivers customer acquisition and management services for over 160 MW of community solar, providing access to thousands of customers throughout Massachusetts, New York, and Minnesota.

BlueWave submits these supplemental comments in addition to supporting the public comments of CCSA, NECEC, SEIA, and SEBANE. We greatly appreciate the Department's responsiveness to our previous comments in the SMART 400 MW review process, particularly the proposed program expansion of 1600 MW and the continued progress being made on the dual-use guidelines. The emergency regulations drafted by the Department are an encouraging step forward to the continued success of the SMART program and the vibrancy of the solar industry in Massachusetts.

BlueWave is also grateful to the Department for your quick action on extending statements of qualification in response to the COVID-19 pandemic. Your action was meaningful to our and the overall industry's efforts to expand access to solar in the Commonwealth. Our below comments regarding the SMART emergency regulations highlight the most critical topics that impact BlueWave's portfolio, representing both projects under development and customers who depend on our community solar services.

Land Use and Dual-Use

BlueWave acknowledges the many stakeholder conversations and draft proposals that the Department has incorporated into the SMART emergency regulations as they pertain to land use. We appreciate the attention to our concerns and are encouraged by the positive response from the Department on several topics, including the proposed changes to the greenfield subtractor, the expanded definition of important farmland, and the pollinator adder. The emergency regulations for land use are an important step towards broader land conservation needs. A significant portion of our projects, however, are still adversely and unfairly impacted by several aspects of the proposed emergency regulation, including the inclusion of the Critical Natural Landscape (CNL) layer and the proposed exception to the applicability of the new land use and siting criteria. Land use changes represent BlueWave's greatest concern with the Department's

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proposal, and we stand ready to collaborate with the Department in hopes of finding a more appropriate application of the layers and an expanded exemption provision.

The CNL layer presents the biggest adverse impact to BlueWave's project portfolio. We are concerned that this layer does not represent an otherwise regulated land area. The Department has not made it clear which agencies have input into this layer, nor how often it will be updated. The CNL layer appears to create a buffer around other, regulated land use categories, for example, Priority Habitat, but often overlaps with developed land, residential tracts, and pastureland. From a practical and ecological standpoint, the CNL layer does not effectively prevent development in a data-driven manner. The Department should take into consideration that if solar development is not permitted on the CNL layer, there is nothing to prevent housing or permanent commercial development from being sited there in its place.

Proponents of the CNL layer have stated that their main concern is preventing fragmentation, and BlueWave understands this conservation goal. BlueWave suggests that the 50% parcel area ineligibility rule does not consider the fact that developers actively avoid developing on certain areas of a parcel already, due to wetland, Core and Priority Habitat, and other regulations. This means that even if a developer were already avoiding development on certain areas of a parcel, that undeveloped area could still render a project ineligible because of the buffering effect of the CNL layer. We encourage the Department to continue to allow developers to site projects on these parcels *provided the affected area does not overlap with the CNL layer*. This approach eliminates fragmentation as a development risk factor, and rolls back the overly punitive approach currently outlined in the proposed SMART emergency regulations. Therefore, we suggest that the CNL layer must cover 100% of the parcel to be deemed ineligible.

At BlueWave we believe that the future of sustainable solar development lies with dual-use. We expect, however, that more developers will be economically driven to choose dual-use eligibility for their projects as a result of the more stringent land use guidelines proposed by the Department. For example, 55% of the BlueWave development portfolio would be rendered newly ineligible to participate in the SMART program unless they are approved as dual-use projects by the Massachusetts Department of Agricultural Resources (MDAR). In general, however, the dual-use approval process must be clarified and streamlined in order to accommodate this shift in development.

In our experience, dual-use solar serves as an innovative conservation tool for farmers and agricultural land owners. It can also be a tool to meet agricultural land conservation goals, by creating new farmland from parcels that have been neglected. For example according to the New England Food Vision, our region imports approximately 90% of the food it consumes.¹ According to the this report, New England will need to put up to 4-5 million new acres of farmland into production by 2060 in order to increase the amount of food it produces to 50% of consumption. We are already beginning to witness the region's vulnerability to disruptions in the food distribution supply chain with the advent of COVID-19, and impacts which are guaranteed to increase with future climate changes.

We encourage the Department to leverage dual-use as a vehicle to put new acres of farmland into production so that Massachusetts can contribute momentum toward reaching this important goal through inclusion of new, reactivated or otherwise/converted farmland as qualifying for the program under the dual-use guidelines. This would allow land that, but for the availability of dual-use, would remain fallow or underutilized to be transformed into new and productive farmland and become an important contributor to

¹ <http://www.foodsolutionsne.org/sites/default/files/Executive%20Summary.pdf>

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meeting both the Commonwealth's clean energy goals and expanding the role of agriculture in the state economy.

Dual-use projects are an increasingly important option for farmers as the Commonwealth is struggling to shore up the food supply chain during the COVID-19 pandemic. Dual-use solar lease payments and stipends can alleviate significant financial pressure during economic down turns and enable farming enterprises to pivot more quickly. For example, one BlueWave project in Southeast Massachusetts will hire new farmers currently facing expiring leases on other farmland, helping them to maintain and expand production in a lower-cost, lower-risk environment.

BlueWave is an active participant in the Agriculture Solar Tariff Generation Unit (ASTGU) working group. Collectively, we are working with MDAR to improve the dual-use approval process for both MDAR staff and developers. We look forward to helping MDAR identify appropriate resources to boost their confidence in approving projects that meet the robust ASTGU design and siting requirements. We are advocating for the Department to allow recognized third-party partners like the American Farmland Trust, after a certification process, to issue approvals for dual use projects in addition to MDAR. We urge the Department to implement the working group recommendation that the first 80 MW block remain under original program rules until the dual-use approval process is reformed with input from the ASTGU working group stakeholders.

BlueWave firmly believes that the changes we've outlined above will significantly improve conditions for developers struggling with a newly impacted portfolio while continuing to protect Massachusetts' forests, farms, and open spaces.

Land Use Applicability and Exemptions

As the industry coalition has expressed, we are extremely concerned about the impacts of COVID-19 on the solar industry and the customers we serve. Of particular concern to BlueWave is the overlap of COVID-19 delays with existing delays resulting from ASO studies on the applicability of new land use provisions as currently proposed by the Department. If the Department persists with the proposed land use prohibitions, the new rules should only apply to new capacity (blocks 9 and beyond).

The Department should also consider enacting a separate study exemption from the new land use regulations that applies to any project which has experienced unexpected utility study delays. The proposal as currently outlined penalizes many projects, including offtakers, and landowners that have been roadblocked simply because they happened to do business with a utility with poor interconnection practices. For example, National Grid does not release system impact studies, and thus ISAs, until the ASO study is complete for any given project. Developers usually do not apply for permits until the ISA is received and there is an indication of project viability through the expected interconnection cost. Thus, projects that would otherwise be eligible for the original land use restrictions in the SMART program have been held back by the ASO study factor alone. Additional delays from COVID-19 only exacerbate this problem.

ASO Timeline Delays: The solar industry has been severely impacted by the sudden introduction of ASO studies, resulting in significant delays, in some cases over a year, to 2019/2020 project permitting, construction and interconnection. The first ASO study in Massachusetts was instituted only mid-year 2019, beginning with the National Grid Western and Central ASO study involving approximately 900 MW. Part 1 of the study lasted from May through November 2019 with only a 30 business day notice provided to solar developers and placed 372MW of affected projects with an ISA on hold for 7 months. Part 2 completed in May 2020 and involved 391MW of projects

without ISAs. The initial effect on Part 1 projects with full permits and an ISA in hand was so impactful that it received state-level recognition, remedied through DPU Guidance on ASO study communication and a DOER approved 6-month ASO Extension Option offered to all projects with a SMART Pre-SOQ letter.

2019/2020 SMART Application Impact: The ASO studies are now a regular occurrence in both National Grid and Eversource territories and are systematically preventing participating developers from securing ISAs for 2020 projects, a key interconnection milestone. The risks posed by the studies have effectively delayed all other project-related activity, such as securing permits, for 3-9 months at a time, preventing developers from applying to the SMART incentive program in a timely manner. Solar developers typically do not burden a town to move forward with permitting until distribution and transmission level cost estimates are evaluated and the project is deemed financially viable.

2020 SMART Tariff ASO Study Gap: The narrow eligibility criteria of the SMART ASO Extension Option (post-ISA requirements) and the currently proposed 2020 SMART Emergency Regulations (post-permit and ISA requirements) excludes viable 2020 projects with interconnection applications and site control due to the reasons stated above. The new tariff language does not consider projects that paid for and entered into distribution level studies prior to notification of ASO study inclusion and are now delayed by 3-9 months. Utilities will not deliver ISAs until the distribution and ASO studies are complete. In most cases, this will delay projects from receiving permits and ISAs past the current SMART program current exemption rule, allowing 6 months past the April 15, 2020 date to secure an ISA and full permits. A provision should be added to the current emergency SMART regulations that solves for this gap and addresses delays in reaching key project milestones caused by unexpected ASO studies.

Accordingly, we recommend that the following revisions be included in the exemption provision of the emergency regulations to address these significant concerns:

a) New land use restrictions and any change to the land use subcontractor should apply to projects executed to fulfill new SMART capacity – i.e., block 9 and beyond. The current regulation penalizes many projects – as well as offtakers and landowners – developed under prior rules that have experienced long delays due to challenging utility interconnection practices (sufficiently in need of revision to merit DPU review), which are outside a solar company's control.²

b) We recommend that SMART regulations allow for two possible ways to meet the Interconnection Service Agreement (“ISA”) exception criteria identified in Section 20.05(5)(e)(1)(c) of the Emergency Regulations. In addition to the exception criterion for projects that submit an executed ISA within 6 months of the Publication Date³ (i.e., by October 15, 2020), any project that, under the existing interconnection tariffs, should have received an interconnection service agreement by the date of publication of the emergency regulations (April 15, 2020) should be grandfathered to avoid penalizing mature projects that were hamstrung by poor utility performance. Assuming a standard 6-month interconnection timeline, regardless of permitting

²For example, ASO Studies.

³ See Emergency Regulations at 225 CMR 20.05(5)(e)(1)(c).

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status before or after the publication date, any project that submitted an interconnection application by October 15, 2019 should be eligible for the Exception provided for in Section 20.05(5)(e)(1)(c).

Community Solar and Low Income Community Solar

BlueWave appreciates the Department's concern about limited low income participation in the SMART program thus far. The proposed expansion of the definition of low income is a step in the right direction towards addressing barriers to low income participation. This expansion, however, does not go far enough in expanding access to community solar for low income residents in Massachusetts.

The Department proposes expanding the definition of low income by the sole metric of income verification for environmental justice census blocks. However, the Massachusetts Executive Office of Energy and Environmental Affairs defines environmental justice populations as those that meet one or more of the following criteria:

- 25% of households within the census block group have a median annual household income at or below 65% of the statewide median income for Massachusetts
- 25% or more of the residents are a minority population
- 25% or more of the residents have English Isolation.

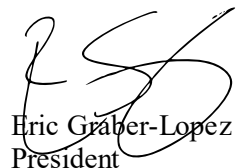
Expanding the definition of low income within the SMART program to include these three criteria for environmental justice populations would align the regulation with existing Massachusetts policy. Not only would this provide ease of understanding under a common definition of low income and environmental justice residents, but would expand community solar access to more residents across the Commonwealth who stand to benefit from electric savings and clean energy.

While BlueWave encourages the Department to take this next step in expanding low income access to community solar within the SMART program, we acknowledge that many barriers still exist when identifying, acquiring, and managing low income community solar customers. We look forward to providing detailed comments in response to the Department releasing new and updated guidelines related to low income community solar.

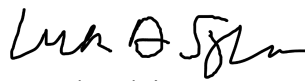
Summary

We urge the Department to implement the simple and effective solutions we have outlined for the CNL land use issue, the land use applicability/exemption provision, and increasing low-income community solar access for SMART. In addition, BlueWave is looking forward to working with the Department and MDAR on streamlining the dual-use process in order to achieve the agricultural, clean energy and land conservation goals of the Commonwealth. If there are any additional questions our team is available to assist you in your decision making. Thank you for your engagement, attention, and for the opportunity to comment.

Sincerely,



Eric Graber-Lopez
President



Mark Sylvia
Chief of Staff