



via email: DOER.SMART@mass.gov

June 1, 2020

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

Re: Public Comments – Emergency Regulations
225 CMR 20.00

Dear Commissioner Woodcock and DOER staff,

Thank you for the opportunity to comment on the Department's Emergency Regulations for the SMART Program (225 CMR 20.00). As background, Renewable Energy Development Partners, LLC ("REDP") is a local project development firm developing commercial-scale solar and other renewable energy projects throughout New England, with projects developed in partnership with both public and private sector entities including municipalities, water and school districts, public educational facilities and agricultural landowners. We developed 40 MW of solar PV under the SREC I and SREC II programs, and are currently developing and constructing a substantial portfolio under the current SMART program.

As an initial comment, we would like to express our continuing appreciation to the Department for its comprehensive review of the SMART program, productive recommendations for improving the program and effective outreach to stakeholders for input. Overall, we believe the SMART program provides an effective framework for the continued success of the solar energy industry in Massachusetts.

As a stakeholder, we would like to offer comments on certain aspects of the Department's emergency regulations, as follows:

ASTGU eligibility delays

We are excited to be part of the small community of ASTGU developers in the state, and were early supporters and adopters of this innovative land use. We have a number of ASTGU projects under construction and in development, and are thus keenly aware of the numerous additional challenges associated with financing these projects. The inability to secure a Capacity Block for a proposed ASTGU project that is otherwise fully entitled but has not yet received its Pre-Determination Letter represents yet another significant barrier to the widespread adoption of these "win-win" projects.

Under the emergency (and prior) regulations, applicants proposing to develop Agricultural STGUs must wait until DOER (in consultation with MDAR, which in turn is subject to MDAR's

consultation with UMass-CEE and agricultural extension staff) has issued a Pre-Determination Letter prior to filing an SQA. While we acknowledge the value of MDAR and UMass input, the current process is very lengthy and involved. The process is not simply focused on whether the proposed ASTGU meets the fundamental ASTGU eligibility requirements, but rather it is focused on providing valuable but very granular feedback on the proposed farming methods including planting, cultivating, harvesting, equipment access, etc. This well-intentioned feedback is aimed at maximizing the success of these innovative projects in the face of limited scientific data, and ensuring the state's fledgling dual use program puts its best foot forward. The downside is that ASTGU applicants must wait until all the details regarding the proposed ASTGU have been thoroughly vetted with a host of regulators and subject matter experts before they can file a SQA and secure not only the Agricultural adder but the Capacity Block as well. The fact that only 7MW of ASTGU projects have been approved to date is reflective of the time-consuming and intensive review associated with obtaining a Pre-Determination Letter. The delay involved disadvantages ASTGU projects unnecessarily.

Accordingly, we would request that DOER allow proposed ASTGUs to file SQAs when all relevant entitlements have been secured (as with a traditional ground mounted project), and to allow the agricultural adder to be secured after the initial SOQ has been issued and subject to DOER issuance of the PDL.

Ineligible land use due to BioMap2 habitat mapping

This provision in the emergency regulations, which was very surprisingly not identified as a potential new regulatory constraint in the straw proposal, represents a massive policy shift with respect to solar land use. As proposed, an enormous amount of private property would be rendered simply ineligible for PV development, absent any consultation or input whatsoever from affected property owners, and absent the normal extensive public comment and review process associated with NHESP's Priority Habitat designation process. This is to say nothing about the potentially questionable accuracy and precision of the location and extents of the mapping layers at a granular level (which for NHESP, are reviewed periodically with public comment), which, since they were not developed for regulatory use, are not subject to public oversight or landowner input. Using these BioMap2 designations as a strict constraint on potential land use for solar would appear to be significant regulatory overreach and will pressure owners of these lands to develop them for less environmentally beneficial purposes.

The provision rendering all of a parcel ineligible even if only 50% of it is designated BioMap2 habitat is especially egregious and arbitrary. As a stakeholder, we wonder what the scientific basis is for the 50% metric? It takes no consideration of the lot size or shape or other factors. We work with a number of landowners and can readily envision scenarios where non-mapped portions of large parcels which may in fact be well-suited for responsible solar development with no habitat impacts are now ineligible for solar use. Indeed, we have developed numerous successful solar projects within mapped Priority Habitat and have worked collaboratively with NHESP staff to craft solar project designs that, by regulatory requirement, result in a net benefit to the species of concern. A blanket prohibition of projects in BioMap2 designated areas ignores

the creative ways solar proponents have worked with state habitat regulators to manage land use in effective and creative ways.

This significant of a change in the midst of the SMART program will also inevitably shake investor's confidence in the stability of the Massachusetts regulatory environment and dampen their willingness to undertake the already lengthy and expensive development process, now made significantly longer and more expensive because of required transmission studies. As just one data point, our small development company will, as a result of this sudden change, lose over \$150,000 of invested capital and hundreds of hours of effort in approximately 15 MW of now dead solar projects. The implications for solar stakeholders statewide are staggering.

We would suggest that the SMART regulations (and a host of other state and local regulations) already constrain development in sensitive habitat areas, and that there is already an established statewide process for the delineation, designation and protection of sensitive habitats. We would strongly encourage DOER to remove the BioMap2 habitat designations as a pass/fail constraint for solar land use under the SMART program.

Capacity Block rates

We would note that the emergency regulations provide for the Capacity Block rates for standalone solar in Blocks 9 through 16 to continue a steady decline of 4% for each block. The original Capacity Block rates were set by competitive procurement in 2017, and the pricing reflected the conditions at that time. Several significant changes in the solar market in Massachusetts have occurred since then, including potential costly upgrades to the statewide electricity transmission system (costs which each new project must absorb) to accommodate the growing number of DG projects, and the ongoing, substantial and potentially long-term changes in the capital markets as a result of COVID-19. The Capacity Block rates established in 2017 simply do not reflect these significant changes. We would recommend DOER establish a process to re-evaluate the Capacity Block rates in light of current and expected market conditions, and provide a mechanism to adjust the rate of decline post-Block 9 accordingly.

Energy storage mandate for projects >500kW

As we noted in our comments on the straw proposal, we have significant concerns regarding the blanket requirement for coupled energy storage systems (ESS) for systems >500kW. While the Department has provided an exception to this requirement for projects that had received an ISA and all government approvals prior to the date of the emergency regulations, these exception criteria do not go far enough and will jeopardize many otherwise viable and well-considered projects.

For instance, it is well known that the project development cycle in Massachusetts can take years. Significant time and expense is invested in preparing the project for approval by the landowner, distribution utility, local land use boards and often state regulatory agencies. These substantial investments in time and money are made prior to receiving an ISA or a government approval. The mandate to add storage to a project that has spent years and potentially hundreds

of thousands of dollars but does not yet have all of its permits, etc. puts all of that time and investment in jeopardy, now hinged upon the technical, permitting and financial viability of a single component of the project (the ESS). The project proponent must go back to the landowner, utility, local land use boards and state regulators to seek approval for the change to the design of the project to add the ESS, adding time and cost and further challenges to the financial viability of the project, thereby endangering the odds of success of the project at a very late stage.

Furthermore, while paired energy storage systems make technical and financial sense in many situations, there are situations in which paired energy storage systems do NOT make sense. For instance, while solar systems are covered by a broad statewide exemption from restrictive local zoning, energy storage systems are not. Very few cities and towns have specifically addressed the siting of energy storage systems in their bylaws. Many towns have provisions in their bylaws that prohibit uses that are not expressly allowed, and local zoning officials are generally unfamiliar with energy storage systems. We foresee situations in which otherwise well-sited and beneficial solar projects would not be eligible for the SMART program because the ESS component was rejected by local authorities. Another set of situations where mandatory ESS may be problematic would include rooftop, canopy or agricultural projects wherein there may not be adequate space available to safely locate the ESS equipment and protect it from other site uses, to say nothing of the increased financing complexity for projects (especially agricultural) that already face considerable financing challenges.

For the reasons outlined above, we strongly recommend that the Department expand the exception criteria to include projects that had commenced the interconnection approval process and/or the local land use approval process before the straw proposal date when the Department initially contemplated the ESS mandate for projects >500kW. In addition, the Department should consider exempting projects >500kW that are sited to help fulfill the Department's other policy goals, including rooftop, canopy, agricultural, landfill and brownfield projects.

Floating Solar

As we noted in our straw proposal comments, we note that to date the Department has not approved a single "floating solar" project under the SMART program, presumably because not a single floating solar project has applied. We continue to work with several agricultural landowners that have human-made agricultural reservoirs well suited for floating solar applications, and have been approached by several others. Unfortunately, in our experience the current adder is insufficient to secure investment capital in these projects in light of the significant technical and operational uncertainties associated with floating solar in the New England climate. The changes to the underlying solar landscape in Massachusetts outlined previously only exacerbate these concerns. We believe floating solar can and should be a meaningful component of the overall portfolio of solar projects installed under SMART, as it furthers a number of policy objectives and can provide modest but critical financial benefits and security to local growers able to host these projects. To that end, we would again encourage the Department to consider increasing the adder value for floating solar projects by two to three cents per kWh on human-made reservoirs serving agricultural land.

In closing, we would like to commend DOER staff for their continued diligence and efforts in implementing and improving the SMART program. Thank you again for the opportunity to comment on the new regulations for this important program.

Regards,

A handwritten signature in black ink, appearing to read 'H. Ouimet', with a long horizontal flourish extending to the right.

Hank Ouimet, PE (FL), LEED AP
Managing Partner