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Ms. Kaitlin Kelly
Massachusetts Department of Energy Resources
100 Cambridge Street, Suite 1020
Boston, MA 02114

**RE: New and Updated Guidelines Related to the Emergency Rulemaking, 225
C.M.R. 20.00 *et seq.*, for Solar Massachusetts Renewable Energy Target (SMART)
program**

Dear Ms. Kelly,

On April 15, 2020, the Department of Energy Resources (“DOER”) promulgated an emergency regulation which updates 225 C.M.R. 20.00 *et seq.*, Solar Massachusetts Renewable Energy Target (“SMART”) program (“Emergency Regulation”). Three new DOER Guidelines accompanied the Emergency Regulation announcement in April: *Guideline Regarding Metering of Solar and Energy Storage Systems*, *Guideline on SMART Consumer Protection* (“Consumer Protection Guideline”), and *Guideline on SMART Alternative Programs for Community Shared Solar and Low Income Community Shared Solar Generation Units* (“Alternative Programs Guideline”). These new Guidelines provide further implementation and eligibility requirements on the introduction of two key program developments in the expanded and revamped SMART program. On May 18, 2020 DOER posted updates to four of the existing SMART Guidelines, including the *Guideline on Establishing SMART Compensation Rates* (“Compensation Rate Guideline”). Prior to promulgating the Emergency Regulation, DOER proffered its 400 MW Review Proposal, which addressed many of the issues covered by the new or existing Guidelines. The Office of the Attorney General (“AGO”) submitted comments on that Proposal on September 30, 2019. DOER held public hearings on two of the new Guidelines on June 9, 2020 and June 10, 2020 and requested written comments on all SMART Guidelines to be filed on or before June 29, 2020. Pursuant to the DOER’s request, the AGO submits these comments for DOER’s consideration.

I. Comments

A. Guideline on Establishing SMART Compensation Rates

The Compensation Rate Guideline provides information on how compensation rates are set under unique circumstances that do not align with the criteria established in the *Guidelines on*

Capacity Blocks, Base Compensation Rates, and Compensation Adders. Compensation Rate Guideline, Section 1. DOER notes that due to billing constraints, the Electric Distribution Companies (“EDCs”) may not be able to read multiple meters installed on several systems that qualify for different compensation rates and are connected behind one retail meter. *Id.*, Section 2. DOER notes that in these instances, which vary by EDC based on each company’s metering capabilities, DOER will determine a unique, capacity weighted, blended rate, which will be the same on each Statement of Qualification for the systems in question. *Id.*

Historically, the compensation rates for Eversource customers have been different depending on whether the system in question is located in Eversource East territory or Eversource West territory. 225 C.M.R. 20.053(e). The AGO understands that this will continue to be the case for the calculation of a blended rate for Eversource customers, but this understanding is not immediately clear based on this Guideline. Thus, the AGO recommends that DOER add the following language to the Compensation Rate Guideline: “Any applicable blended rate for Eversource customers will be based on the Eversource territory (East or West) where the system in question is located.”

B. Guideline on SMART Consumer Protection

The Consumer Protection Guideline describes the information that an Owner or Authorized Agent of SMART Solar Tariff Generation Units (“STGU”) or Community Shared Solar (“CSS”) and Low Income Community Shared Solar Tariff Generation Units (LICSS) must provide to customers regarding costs and contract terms. Consumer Protection Guideline, Section 1. The Consumer Protection Guideline also details the auditing and enforcement processes DOER will conduct of SMART Statement of Qualification Applications and Applicants. *Id.*

1. Customer Disclosure Forms

a. Exception to Customer Disclosure Form (Section 2(d))

DOER requires Applicants to submit customer disclosure forms for the following types of STGUs: (a) STGUs that are less than or equal to 25 kW; (b) LICSS STGUs; and (c) CSS STGUs. *Id.*, Section 2. However, Applicants seeking a Statement of Qualification may be eligible for an exception to the customer disclosure requirements under the following situations: (1) per 225 C.M.R. 20.06(1)(n), customer disclosure forms may not be required for LICSS and CSS Tariff Generation Units if the Applicant can demonstrate to DOER’s satisfaction that the Customers of Record are enrolled without a customer contract; and (2) per 225 C.M.R. 20.06(1)(f)2 and (h)2, customer disclosure forms are not required for those participants in LICSS or CSS Tariff Generation Units who are seeking to receive bill credits in excess of those produced annually by 25 kW of nameplate capacity. *Id.*, Section 2(d).

The AGO is concerned that there are certain circumstances where the Customers of Record for LICSS and CSS Tariff Generation Units may be enrolled without a contract, but where consumers that are receiving the supposed benefit of the SMART Program should still be provided with sufficient information so as to be able to make informed decisions about their

involvement with the Program or their electricity usage.¹ Even without a contract, customers who are promised benefits of an STGU should have a reasonable expectation of what those benefits will be for personal financial planning. DOER's consumer protections are as much a check on ill-reputed marketing efforts as they are a backstop to SMART Program eligibility.

Given the AGO's experience with the competitive supply industry, the AGO is concerned that competitive suppliers will take advantage of this exception to the detriment of its customers. Competitive suppliers may include eligible SMART CSS Tariff Generation Units as part of their overall marketing scheme and product offering to their customers, but argue to DOER that because the product is sold as a competitive supply package, not as a SMART CSS product, a contract for a SMART unit does not exist and therefore, no customer disclosure is required. While the competitive supply customers may not have a contract for STGU only, the customers would participate in SMART indirectly via the overall contract with the competitive supplier, and thus, should still be informed as to any costs and/or benefits that may accrue to them via their participation in the Program. The sensitivity here is the marketing of the competitive supply product, which would include CSS units regulated by DOER and the customer. This is no different than if a customer purchases directly from a CSS Tariff Generation Unit alone. In both circumstances, the customer is being offered a product which hinges on SMART eligibility and to which the customer is expecting certain benefits for the eligibility. The same could be said for scenarios such as LICSS Tariff Generation Units where a housing authority is the Customer of Record, but where the tenants served by the housing authority are involved in the Program without a customer contract.

The AGO recommends that DOER require an alternative form where Applicants may qualify for an exception to the customer disclosure requirement to the Guideline under Section 2(d). Ideally such a form would provide those customers that do not hold a direct contract for a SMART Program eligible contract with valuable information as to the costs and benefits of their indirect involvement. The AGO suggests the form be a simple, streamlined document providing similar information as to that which must be provided to customers under Sections 2(b) and 3(b)² of DOER's Alternative Programs Guideline. The AGO stands ready to assist DOER in developing the necessary document or complimentary Guideline, when appropriate.

b. Requirements to Customer Disclosure Forms (Section 2) – Net Savings Disclosure.

For all three categories of Applicants (STGUs that are less than or equal to 25 kW; LICSS STGUs; and CSS STGUs) for which DOER requires customer disclosure forms, the disclosure forms include contract pricing information and complete system cost information, but there is currently no required disclosure of information regarding *net costs* to the consumers. See Consumer Protection Guideline, Sections 2(a), (b) and (c). Net Costs refers to the combined billing responsibilities of customers for the SMART Program product and to their EDC. Given

¹ See also AGO Comments to DOER on 225 C.M.R. 20.00 *et. seq.*, at 3 (June 1, 2020).

² As of the filing date of these comments, the referenced sections here are both numbered "2(b)". The AGO assumes this to be a clerical error and inserts "3(b)" for the second referenced section herein.

that this information may be lacking elsewhere (*i.e.* marketing materials), the AGO recommends that DOER require that information on *net costs* be provided to consumers in the customer disclosure form.

c. Maximum Escalator for Low Income Customer Contracts (Section 2(a)).

Section 2(a) of the Consumer Protection Guideline states, in part, that proof of net savings for Low Income Customers “includes but is not limited to a rate comparison between the customer’s existing basic service rate including all applicable discounts, posted on a recent bill and the corresponding rate charges and/or credits pursuant to the solar contract, to be computed on the customers’ kilowatt hour usage.” Further, the Consumer Protection Guideline states that the escalator in the solar contract must not exceed 3% per year. *Id.* at Section 2(a)(1); *see also* Guideline Regarding Low Income Generation Units (“Low Income Guideline”), Section 4(i). The AGO opposes the escalator limit of 3% for any solar contract associated with a Low Income Generation Unit as set out in the Consumer Protection Guideline and the Low Income Guideline. While the escalator is designed to be an additional protection for low income customers, DOER set the value of the escalator at what is typically the highest in the range used by the solar industry.³ This escalator ignores the economic challenges faced by low income ratepayers by potentially enriching the solar developers who take the low income adder. The low income adder is designed, in part, to compensate for the added costs of serving this sector, including gaps in financing. The AGO is not blind to the financial constraints of STGU developers or the potential need for some type of escalator, however, setting the rate at the highest value for the most vulnerable customers does not strike the appropriate balance. Low income ratepayers’ income often does not rise on a yearly basis. Therefore, they should not be subject to increasing contract costs at the same level as other solar customers. The AGO recommends that DOER set the escalator at no higher than 2%. Further, DOER should revise this section of the Consumer Protection Guideline to make clear that the net savings requirement applies for the life of the solar contract and that any contract escalator must not result in a violation of the net savings requirement.

d. Net Savings for Low Income Customers (Section 2(a)1)

The AGO also recommends a change to how the information regarding “net savings” is calculated and presented to low income customers. Instead of a rate comparison using the basic service rate represented on a customer’s recent bill, DOER should require the Owner or Customer of Record for any STGU that services an eligible Low Income Customer to provide a rate comparison between a customer’s *one-year average* basic service rate and the corresponding rate charges and/or credits pursuant to the solar contract. This is important because the basic service rate changes every six months while charges for a SMART contract are likely to remain constant for a twelve-month period. Moreover, the customer disclosure should indicate if the customer is paying for a supply rate other than basic service, as many receive supply from a municipal aggregation plan or a competitive electric supplier, both of which likely have a different rate than basic service. Finally, DOER should revise Section 2(a) to clearly state that

³ Based on contracts reviewed by the AGO.

the low income rate applies to the total bill, while the calculation of SMART Program credits focus on the components of the bill related to the distribution rate.

e. Availability of Customer Disclosure Forms.

In addition to the concerns highlighted above, the AGO notes that this Guideline provides links to the customer disclosure forms. *See* Consumer Protection Guideline, Sections 2(a), (b) and (c). These links bring a consumer to the general SMART Program website. The AGO recommends that this Guideline link directly to the applicable customer disclosure forms for ease of access. Additionally, for the same reason, the AGO suggests that DOER add a link to the customer disclosure forms to the Consumer Protection section of the SMART Program website.

2. Auditing SMART Applications

Section 3 of the Consumer Protection Guideline states that “[t]he Department shall conduct periodic audits of Applicants’ SMART Statement of Qualification Application submissions at random.” The AGO fully supports this measure. The AGO notes, however, that the term “Applicant” is not defined for the purposes of the auditing process in the SMART regulations or in this Guideline. *See id.*; 225 C.M.R. 20.02.⁴ This could lead to confusion, or worst—a gaming of the system to avoid regulatory action—as to how any resulting warnings may apply under Section 4 of the Guideline. Thus, the AGO recommends that DOER define the term “Applicant” in this Guideline and explain how that definition will apply to the auditing process and the issuance of warnings.

Additionally, in the interest of transparency for SMART consumers and potential consumers, the AGO encourages DOER to publish a list of Applicants that receive warnings under Section 5 of the Consumer Protection Guideline. Consumers who wish to participate in the SMART program should have access to this important and relevant information when researching available options prior to enrolling in the program.

C. Guideline Regarding Alternative Programs for Community Shared Solar Tariff Generation Units and Low Income Community Shared Solar Tariff Generation Units

1. Opt-out Enrollment Should Be the Default

The Alternative Programs Guideline provides the eligibility criteria and processes and procedures for STGUs to qualify as CSS and LICSS units by participating in a program through which electricity or bill credits are allocated through a municipal load aggregation program established pursuant to M.G.L. c. 164, § 134, or through a low income community shared solar program established and administered by an EDC pursuant to 225 C.M.R. 20.06(1)(f)4 (collectively, “Alternative CSS/LICSS Program”). Alternative Programs Guideline, Section 1. Per Section 2(b) of this Guideline, “[t]he Alternative CSS/LICSS Program may use an opt-out enrollment consistent with the municipal aggregation enrollment process.” The AGO understands that to date, CSS programs have been opt-in programs, whereas municipal load

⁴ *See also* AGO Comments to DOER on 225 C.M.R. 20.00 *et. seq.*, at 3.

aggregation is opt-out. The language of the Alternative Programs Guideline appears to set the default as an opt-in by allowing for opt-out enrollment with the permissive “may use.” Alternative Programs Guideline, Section 2(b). To maintain consistency with existing municipal load aggregations and most EDC programs, the default should be opt-out with an option to offer something creatively. Thus, the AGO recommends that DOER modify the Alternative CSS/LICSS Program to state programs “may use an *opt-in* enrollment.”

2. Customer Transparency of Renewable Energy Credit Ownership Claims (Section 2(b)(iii))

Section 2(b)(iii) of the Alternative Programs Guideline explains that as part of the enrollment process for an Alternative CSS/LICSS Program established by an EDC, customers must be provided with a “statement indicating the participating customer will: (1) . . . (3) not use solar power as a result of its participation in the program to include an explanatory statement of the CSS or LICSS transaction and the settling of renewable energy credits⁵ (‘RECs’).” The AGO has several concerns regarding this sentence. First, the language appears to prohibit the use of solar power if a customer is enrolled in the EDC program, thereby prohibiting a customer from installing solar at their property or participating in a separate CSS/LICSS project. Second, while DOER is correct to treat the description of a customer’s claims regarding environmental credits differently among the two types of alternative programs—as designed, the EDC is the recipient of SMART renewable energy certificates (“REC”) regardless of STGU owner. *See* 225 C.M.R. 20.05(5)(d). What that REC means to the customer will ultimately depend on the EDC’s program design. An EDC program may settle the RECs associated with the SMART Alternative Program as part of its existing annual Renewable Energy Portfolio Standard (“RPS”) obligation⁶, or it may represent voluntary additional RECs to be settled on behalf of participating customers, or the EDC may sell the RECs to offset the cost of the program. Thus, how DOER directs the EDC to communicate REC claims to customers must allow for flexibility. The AGO suggests the following language for Section 2(b)(iii):

“iii. ‘Use solar power as a result of its participation in the program because the EDC settled voluntary incremental renewable energy certificates (‘RECs’) as a result of the STGU’ or ‘not use solar power as a result of its participation in the program because this STGU delivers RECs to either satisfy a portion of the EDC’s RPS obligation or sold to offset program costs.’”

⁵ While the term “RECs” is not defined in statute or regulation, RECs are typically referred to as renewable energy certificates (*see* M.G.L. c. 25A, § 11F(d)) and are inherently linked to the GIS *Certificates* referred to in 225 C.M.R. 20.05(5)(d). The AGO recommends Section 2(b)(iii) be changed to “renewable energy *certificates*” rather than “credits.” For purposes of these comments, the AGO understands that RECs are certificates.

⁶ M.G.L. c. 25A, § 11F(a).

II. Conclusion

The Attorney General respectfully requests that DOER adopt the above recommendations prior to adopting the final SMART guidelines.

Respectfully submitted,
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