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Comments on the Consumer Protection Guideline

Vivint Solar appreciates the opportunity to submit comments on the Consumer Protection Guideline. Vivint Solar is a leading full-service residential solar provider in Massachusetts, with over 20,000 solar installations since 2012. Vivint Solar provides an end-to-end experience for customers from the design and installation of a system to flexible financing options including power purchase agreements, lease agreements, and customer ownership. In addition to solar, Vivint Solar also provides solar plus energy storage through the ConnectedSolutions program and electric vehicle chargers.

In addition to these comments, Vivint Solar strongly supports the joint comments on the Consumer Protection and Metering for Energy Storage Systems submitted by SEIA, CCSA, NECEC, Mass Solar, and SEBANE.

Summary of Recommendations

The underlying principles in the Consumer Protection Guideline of enhanced protection of low-income customers and accurate customer disclosure forms are both improvements to the SMART program that will lead to greater consumer confidence in the clean energy industry. Vivint Solar supports the Consumer Protection Guideline, but we do believe that several improvements could be made to provide the desired enhanced consumer protections that are clear and workable for businesses.

Ensuring savings for low-income customers is a common-sense requirement given the SMART program structure which provides a higher incentive to companies to help offset lower contract revenues. Historically low-income customers have not had the same level of access to renewable energy as other groups, making outreach to low-income customers a necessary focus of an equitable SMART program.

Our recommendations, specifically regarding the demonstration of net savings for low-income customers, would help ensure that businesses could feel comfortable providing their products and services to low-income customers without undue risk of suspension from the SMART program. If the requirements on what is acceptable for demonstrated savings are too vague and the punishments for non-compliance too harsh, businesses will choose to avoid that unnecessary risk - which will further exclude low-income customers from benefitting from the

SMART program. The number of low-income consumers who are able to consider rooftop solar for their home is already such a low percentage of all households that it would not take a lot of potential risk for a business to decide that the risk of doing business with low-income households outweighs the benefits of a higher SMART incentive.

Vivint Solar recommends the following modifications to the Consumer Protection Guideline:

- **Clarify acceptable methodologies, or provide examples, for demonstrating savings for low income customers.**
- **Address how to comply with the demonstration of net savings for customer-owned or financed systems.**
- **Support the inclusion of a 3% cap for escalators in solar contracts for low-income customers.**
- **Refine how warnings are issued for situations where the same defect exists on multiple disclosure forms (e.g. a standard answer to a disclosure form question that is deemed insufficient during an audit).**
- **Establish an expiration period or process for accumulated warnings.**
- **Allow for more discretion on the number of warnings required for suspension and the duration of the suspension based on the nature/severity of warnings identified in an audit and number of applications.**
- **Explicitly add protections for customers who have already signed a contract with an entity that gets suspended.**
- **Clarify the requirement that disclosure forms for third-party systems <25 kW be signed by the party who is entering into the solar contract but may not be the Customer of Record with the utility.**

Discussion on Recommendations

1) Clarify Demonstration of Savings Requirement

Well-crafted consumer protection measures should provide consumers actionable information to protect against real vulnerabilities while also being clear and practical for businesses to be able to comply. Measures that leave businesses in a state of uncertainty on whether the protocols they have implemented are adequate are very challenging. The demonstration of savings requirement for low-income customers clearly provides customers actionable information to make an informed solar decision, but the current information in the guideline regarding this requirement leaves significant ambiguity for solar companies.

One extremely helpful supplement to the Guideline would be providing some examples of how the net savings demonstration could be done in a way that is compliant. Currently a company could develop an approach to providing the demonstration of net savings, which they believe is compliant, but in the course of an audit discover that DOER does not agree with that approach which would then result in their suspension from the SMART program for one year.

For example, the current Guideline states that one acceptable method includes *“a rate comparison between the customer’s existing basic service rate, including all applicable discounts, posted on a recent utility bill...”* While this may seem generally clear there are several important caveats that introduce a significant amount of uncertainty on how a developer would actually implement this approach. The phrase *“customer’s existing basic service rate”* combined with *“posted on a recent utility bill”* seems to require the basic service rate at the time the disclosure form is signed, which would preclude the use of an “annual” or multi-year basic service rate which would be much better comparisons given solar production and savings are best understood over at least a one year period. Given that the basic service rate changes every 6 months and can swing by \$.03/kWh or more, this nuance is not trivial. A contract that would show savings when looking at an annual time frame for the basic service rate could very well *not show savings* if only compared to the “low” basic service period of the year.

Additionally, the approach above appears to require a manual utility bill analysis and savings demonstration created for each low-income customer. Many companies currently have the SMART disclosure forms auto-populate information based on the customer’s contract to ensure that the two documents include the same information and provide a seamless experience for customers. If a manual process is now required it will introduce more opportunities for errors to be made, which now have very strict consequences. The utility rate information included on a demonstration of net savings should be allowed to come from the utility tariffs and records of basic service costs rather than matching specifically the customer’s utility bill for one month.

This savings requirement could be simplified by DOER providing the \$/kWh value for each utility that solar contracts must be lower than to reasonably provide low-income customers net savings. This could be updated annually like other components of the SMART program and would make compliance and auditing much easier as there would be no ambiguity outside of unique contract arrangements. Presumably DOER has a preferred methodology on how to calculate savings which could provide those values (assuming a standard lease/PPA arrangement with a standard escalator up to 3%). The audit process would then just need to ensure that the solar rates on the contract are at or below the acceptable figure rather than evaluating a different demonstration of savings methodology for each solar company.

2) Net Savings for Customer-Owned Systems

The Guideline as drafted appears to only consider third-party ownership structures for low-income customers. While this is understandable because the majority of low-income customers will likely not be able to outright purchase or finance a solar system, those cases do arise occasionally. Guidance needs to be included on how to meet the demonstration of net savings requirement for those instances.

Customer-ownership typically provides greater long-term benefits than third-party owned systems, but specifically calculating estimated savings can be fairly complicated, particularly if

the analysis needs to include an estimated SMART incentive value assumption despite the system not yet having a preliminary Statement of Qualification.

We see a few potential approaches for this small minority of low-income solar customers: assume that customer-owned systems will provide long-term savings and thus not require the demonstration, set a cost per watt cap for low-income systems rather than requiring a specific demonstration of savings, or provide a DOER-approved savings methodology to be used by solar companies.

3) Use of a 3% maximum escalator

We are supportive of requiring contracts for low-income customers to include an escalator of no more than 3%. This figure is in alignment with standard industry practice and is a reasonable figure based on historical EIA data for Massachusetts.¹ In our analysis of utility rate changes for the Commonwealth over both 5 and 20-year periods we see utility escalation rates that are greater than 3% for the state as a whole, as well as each of the individual EDCs.

4) Warnings for the Same Defect on Multiple Forms

Perhaps the single most problematic aspect of the current Guideline is that the same material defect on multiple disclosure forms would lead to suspension without any ability for the company to correct the issue. Many of the fields or answers to questions on the disclosure forms are the same on each disclosure form, and if any answer is deemed to be insufficient in some way that would mean every disclosure form for that company would have a warning. Companies should have the ability to cure any issues identified in an audit unless the defect is clearly malicious - not just insufficient. To be clear this isn't meant to cover situations such as where the solar contract rate on the disclosure form does not match the actual contract on multiple disclosure forms, rather it would be applicable to more "form/standard" answers on the disclosure form.

5) Warning Expiration Period

One notable item that is missing in the current Guideline is any time period or process by which warnings can "drop" from a company's record. Without knowing how frequently each company will undergo an audit it is difficult to determine what the appropriate time frame would be, but there should be a way for warnings to drop off a company's record. The SMART program is designed to run for an additional 1,600 MW and the residential blocks are only roughly halfway through the original 1,600 MW blocks, meaning without an expiration on warnings a company

¹ The state average retail price of electricity for Massachusetts for the residential sector can be found at: <https://www.eia.gov/electricity/data/browser/#/topic/7?agg=0,1&geo=002&endsec=8&linechart=ELEC.PRICE.MA-RES.A&columnchart=ELEC.PRICE.MA-RES.A&map=ELEC.PRICE.MA-RES.A&freq=A&start=2001&end=2019&chartindexed=0&ctype=linechart<ype=pin&rtype=s&maptype=0&rse=0&pin=>

Individual utility data can be downloaded at: <https://www.eia.gov/electricity/data/eia861m/>

could end up suspended for a year even if they only accumulate 3 strikes over a 2-4 year time frame. No company is perfect and mistakes will happen, and it would seem excessively harsh for a year suspension due to 3 individual mistakes over several years.

We would recommend that any accumulated warnings be removed from a company's record following the completion of an audit that did not lead to any additional warnings. Additionally, warnings dropping after an appropriate amount of time would also be a solution. Companies that may initially have an issue but take the adequate steps to correct the issue should not be subject to that warning indefinitely, especially given the extremely small number of warnings that lead to a full year suspension.

6) Discretion Based on the Severity of the Defect(s)

We believe that having a hard line at 3 warnings, regardless of the underlying issue that led to the warning or the severity of the identified defect, may not be the best approach. For example, it is common for a customer to have multiple designs completed for their home throughout the installation process to see the impact of different module placement, module or inverter technologies, or related items. It is possible that multiple of these designs could have had disclosure forms generated and potentially signed by the customer. Having an incorrect disclosure form accidentally submitted for one of the system designs that did not end up being used is not the same caliber of defect as providing an inaccurate demonstration of savings figure or omitting one altogether. To give those defects equal weight in deciding whether to suspend a business from the SMART program, and likely drive them out of business in the state, would be heavy-handed.

To be clear, 3 material defects and the accompanying warnings could be grounds for suspension if the severity of the violations warranted it, we would just ask that there be more flexibility allowed in that determination. There are also significant volume differences between companies, so 3 defects for one company could be 5% of their total disclosure forms of the period of time covered by an audit, while 3 total defects could be only .1% of another company's SMART submissions during that same audit period. Allowing a company to remain in the program with a 5% error rate on their disclosure forms while suspending another company for having a .1% error rate (due to just a higher total number of disclosure forms submitted) would not be an equitable outcome. Using a percentage of audited disclosure forms measure rather than a hard 3 warnings, regardless of number of forms, would be a better approach to ensure all companies are held to the same standard.

In the same vein, we believe that the term of a suspension should be based on the severity of the issues identified – a one size fits all may not be appropriate for all situations. It is also possible to have additional disciplinary actions in between allowing full participation in SMART and a full suspension from the SMART program. Other potential disciplinary actions could include a more frequent audit schedule, requiring corrections or restitution to customers who were affected by specific disclosure form defects, limits on number of applications allowed to

be submitted for a period of time, or other actions that would be appropriate given the identified defects.

7) Protections for Customers of a Suspended Solar Company

The guideline should include explicit protections for customers already under contract with a solar company in the event that the solar company is suspended from the SMART program. The purpose of the suspension is to punish the company, and the customers should not be collateral damage. We would propose a common-sense approach that any customer who had signed a contract with a solar company prior to their suspension from the SMART program and where the SMART payments would be made to the customer (not the company), SMART applications should be allowed to be submitted on their behalf by the suspended company. This would allow any customers who may already be outside of their cancellation period, or perhaps even already installed, to not be negatively impacted by the suspension of a solar company which the customer had no control over.

8) Clarify Signature Requirements for <25 kW Systems

The guideline states: *The customer disclosure form must be signed by the Owner of the STGU or, if the Owner is a third-party, the form must be signed by the Customer of Record.*

This should be clarified that the person signing the disclosure form should match who is signing the solar contract. Customer of Record has the specific meaning of the customer on file with the utility, but that is not necessarily always the person who is signing the solar contract and needs to see the information provided by the disclosure form. This is particularly true for landlord/tenant situations or where different members of the household are signing the solar contract and on the utility account. As is, the guideline would seem to imply for third-party owned systems that the person signing the solar contract is not relevant if they are not the utility customer of record – which we do not believe is the intent of this section.

Conclusion

There is no doubt that the enhanced consumer protections found in the Guideline will better protect consumers of the Commonwealth, increase trust in the solar industry, and help the SMART program fulfill its mission of building 3,200 MW of solar in Massachusetts. We appreciate the opportunity to provide these comments and are always willing to discuss any of the recommendations included here if further information is needed.

Sincerely,

A handwritten signature in black ink, appearing to read "Andy Walker".