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March 5, 2021

***VIA ELECTRONIC MAIL ONLY (DOER.SMART@mass.gov)***

Department of Energy Resources  
Attn: Abby Barnicle, Renewable Energy Program Coordinator  
100 Cambridge Street, Suite 1020  
Boston, MA 02114

*Re:* Comments of the Cape Light Compact JPE in Response to Proposed Revisions  
to the Solar Massachusetts Renewable Target ("SMART") Program Guidelines

Dear Ms. Barnicle:

Enclosed for filing please find the Public Comments of the Cape Light Compact JPE (the  
"Compact") regarding the Department of Energy Resource's revised SMART Program guidelines.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Rebecca F. Zachas".

Rebecca F. Zachas

RFZ/drbb  
Enclosure

cc: Margaret T. Downey, Compact Administrator (w/enc.) (via email only)

## **SMART PUBLIC COMMENTS OF THE CAPE LIGHT COMPACT JPE**

The towns of Aquinnah, Barnstable, Bourne, Brewster, Chatham, Chilmark, Dennis, Edgartown, Eastham, Falmouth, Harwich, Mashpee, Oak Bluffs, Orleans, Provincetown, Sandwich, Tisbury, Truro, West Tisbury, Wellfleet and Yarmouth, and Dukes County organized and operating collectively as the Cape Light Compact JPE, a joint powers entity organized pursuant to G.L. c. 40, §4A½ and G.L. c. 164, §134 (the “Compact”), respectfully submit these comments to the Department of Energy Resources (“DOER” or the “Department”) in response to its February 12, 2021 request for public comment on the revised Solar Massachusetts Renewable Target (“SMART”) guidelines.

### **I. PROCEDURAL BACKGROUND**

On February 12, 2021, DOER issued a set of revised guidelines for public comment, including the Guideline Regarding Alternative Programs for Community Shared Solar Tariff Generation Units and Low Income Community Shared Solar Tariff Generation Units (“LICSS Guideline”). Last year, DOER modified the SMART regulations codified at 225 C.M.R. 20.00 (“SMART Regulations”) to allow for enhanced access to the benefits of community shared solar for low-income customers by providing that “electricity or bill credits may be allocated through a municipal aggregation program” as a basis for a solar project being able to qualify as a Low Income Community Shared Solar Tariff Generation Unit. *See* 225 C.M.R. 20.06(1)(f)4. DOER also adopted the related LICSS Guideline effective May 18, 2020 and revised October 8, 2020.

### **II. BACKGROUND OF THE COMPACT**

The Compact is a governmental aggregator under G.L. c. 164, §134 that provides energy services to consumers on Cape Cod and Martha’s Vineyard. The Compact operates a municipal

aggregation competitive supply program pursuant to a municipal aggregation plan, which provides electric power supply on an opt-out basis to customers across all customer classes located on Cape Cod and Martha's Vineyard. The Compact's municipal aggregation plan ("Plan") was originally approved in D.T.E. 00-47 on August 10, 2000 by the Department of Public Utilities ("DPU"). At the request of the DPU, the Compact filed an update to its original plan in 2014 for review and approval in D.P.U. 14-69, with an order issued on May 18, 2015. The Plan was also administratively updated in accordance with D.P.U. 17-95. The Compact maintains a business office at 261 Whites Path, Unit 4, South Yarmouth, Massachusetts 02664.

As documented in its Plan, the Compact is governed by a Joint Powers Agreement ("JPA").<sup>1</sup> The Compact is the only multi-municipality aggregator operating in Massachusetts. The Compact began providing default service in 2001 and has been offering power supply to all customer classes since 2005.

In addition, the Compact also provides comprehensive energy efficiency services to Cape Cod and Martha's Vineyard as a Program Administrator of the Massachusetts Joint Statewide Three-Year Electric and Gas Energy Efficiency Plans, most recently approved in D.P.U. 18-116. The Compact's energy efficiency programs target the residential, income eligible, and commercial and industrial customer sectors.

### **III. COMMENTS**

The Compact enthusiastically supports DOER's aims to increase the number of low-income community solar projects and to deliver benefits from those projects to low-income customers. See 225 C.M.R. 20.06(1)(f)4; DOER PowerPoint, "SMART Program 400 MW

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<sup>1</sup> The Compact's Joint Powers Agreement is available online at <https://3jy14ha9u771r7qzn35g0s6cwpengine.netdna-ssl.com/wp-content/uploads/2018/01/First-Amended-and-Restated-JPA-FINAL-12-13-17.pdf>.

Review,” at 19. In fact, the Compact has a strong interest in offering a LICSS program and has been actively working to develop one.

However, some of DOER’s proposed revisions in the LICSS Guideline<sup>2</sup> appear to be premised on an improper extension of authority over LICSS programs to the DPU, and would result in significant barriers for municipal aggregators offering a LICSS program. The Compact is concerned about the viability of a LICSS program if the proposed revisions are ultimately implemented. As discussed below, the Compact asks DOER to: (A) reject the proposed revisions on LICSS program authorization in a municipal aggregation plan and additional DPU directives (Section 2(d)); (B) clarify participation by low-income customers in more than one LICSS project (Section 2(c)(iv)); (C) modify the proposed revisions relating to energy or energy credit allocations (Section 2(c)(ii)); (D) clarify enrollment in LICSS programs (Section 2(b)); and (E) clarify the use of the term “municipality” in referring to an aggregation (Sections 2(d) and 2(e)).

**A. DOER Should Strike Section 2(d) of the Proposed Revisions Related to LICSS Program Authorization and Regulation.**

DOER proposed revised language to Section 2(d) of the LICSS Guideline, stating that:

Municipal Load Aggregation Plan Applicants must demonstrate to the Department that the proposed CSS/LICSS program is consistent with the CSS/LICSS program included in a municipality’s municipal load aggregation plan approved by the Department of Public Utilities. Further, the CSS/LICSS program must comply with any relevant Department and Department of Public Utilities directives related to CSS/LICSS and municipal aggregation programs.

The Compact requests that DOER strike Section 2(d) from its proposed revisions. The first sentence of Section 2(d) would inappropriately require that a LICSS program must be expressly referenced in a municipal aggregation plan prior to a municipal aggregation offering

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<sup>2</sup> The Compact does not have any comments related to the other revised SMART guidelines.

such a program. Municipal aggregators would thus be required to amend and re-file their municipal aggregation plans with the DPU prior to offering a LICSS program. In addition, the second sentence in Section 2(d) appears to contemplate new DPU directives on LICSS programs for which the DPU does not have statutory authority. As discussed below, the Compact objects to Section 2(d) because: (1) the DPU does not have express statutory authority to regulate LICSS programs; (2) municipal aggregation plans, like the Compact's Plan, already contain language authorizing LICSS programs, making any re-filing with the DPU unnecessary; and (3) it would erect barriers that would discourage municipal aggregations from offering LICSS programs.

**1. Section 2(d) would be inconsistent with the regulation of municipal aggregations in the Commonwealth**

DOER should strike Section 2(d) of the proposed revisions because the DPU does not have authority to regulate LICSS programs in these ways and DOER does not have authority to add this new requirement. In fact, municipal aggregations are able to offer a LICSS program by right in a deregulated market.

LICSS programs are already regulated by the SMART Statute and the SMART Regulations. Yet, neither the SMART Statute nor SMART Regulations call for municipal aggregations to amend and re-file their municipal aggregation plans prior to offering a LICSS program, nor do they authorize DOER to add this new requirement. The Compact has been working on developing a LICSS program in reliance on the SMART Statute and Regulations. DOER considered the LICSS Guidelines in May 2020 and again in October 2020, with no mention either time of this new DPU re-filing requirement.

In addition, there is no municipal aggregation statute or regulation that authorizes the DPU to require municipal aggregators to amend and re-file an approved plan to offer optional products, including a LICSS program, or to issue new directives on LICSS programs. Further,

G.L. c. 164, §134 contains no requirement that municipal aggregators must file revised aggregation plans. G.L. c. 164, §134(a). There is no language in Section 134 that, according to its plain meaning, evinces any legislative intent that municipal aggregators file revised aggregation plans. *Id.* The Department has acknowledged that the plain language of Section 134 does not address the requirements for filing a revised aggregation plan. *Cape Light Compact*, D.P.U. 14-69, Order at 29 (May 1, 2015).

Municipal aggregators are not regulated by the DPU in the same manner as electricity suppliers. *City of Lowell*, D.P.U. 12-124 (November 27, 2013) (unlike electric companies, the rates of a municipal aggregation program are set by municipal officials after the DPU approves their plan and the operations of a municipal aggregation program are ultimately overseen by municipal officials). It is improper for DOER to extend the DPU's authority in these ways in a deregulated market.

Further, the Compact's approved Plan does not require it to amend and re-file it with the DPU in order to offer a LICSS program. The Plan states that the Compact will update the Plan should the Compact seek to "materially deviate" from its approved plan or if changes in the law, regulations, the competitive supply market, or other circumstances "result in the approved plan no longer accurately describing the primary operations" of the aggregation. A low-income customer offering from a LICSS project should not be considered a material deviation from the Plan. The Plan still accurately describes the primary operations of the Compact's aggregation; but for the additional low-income rate, there is no change in the Compact's power supply operations.

## **2. The Compact's Plan already authorizes it to offer a LICSS program**

LICSS programs do not need to be expressly referenced in a municipal aggregator's

aggregation plan. The Compact's Plan already includes renewable energy projects, like those involved in a LICSS program, and thus there is no need for the Compact to amend and re-file its Plan. Consistent with the authority set forth in its Plan and governing agreement, the Compact has undertaken various programs through its aggregation to support renewable energy development without needing to amend its plan in each instance to address each specific program.

Section 2.2 (Program Operations) of the Plan states that the Compact's goals, policies, and purposes include the following:

- To explore all available options for the development of renewable energy resources;
- To encourage environmental protection through contract provisions;
- To utilize and encourage renewable energy development to the extent practicable through contract provisions and demonstration projects; and
- To advance specific community goals that may be selected from time to time.

Plan at Section 2.2 (3), (7), (8) and (9). In addition, Section 2.3.1(1) (Power Supply Program) of the Plan provides that, "[a]t the direction of the Governing Board, the Compact's Power Supply Program also includes the following components":

The CPO explores all available options for the development of renewable energy resources.

Moreover, Section 6.0 of the Plan also states that the generation charge for each customer class, "or any customer grouping by load factor or other appropriate pricing category, will reflect the Compact's best efforts to secure the best terms and conditions and the most competitive market rates available at the time of contracting."

In implementing a LICSS program, among other things, the Compact would – consistent

with its Plan – support the development of renewable energy resources, advance community goals of greater equity in participation in community solar, and achieve the best results for low-income customers. Thus, there should be no need for the Compact to re-file with the DPU to offer a LICSS program.

### **3. Section 2(d) would erect barriers to municipal aggregations offering LICSS programs**

The proposed revisions in Section 2(d) would create significant barriers discouraging municipal aggregations from offering LICSS programs. First, any requirement that municipal aggregations amend and re-file an aggregation plan to offer a LICSS program would likely be a non-starter given the burdensome nature (e.g., staff time, attorneys' fees) and length of time involved with such a re-filing.<sup>3</sup> In addition, possible new DPU directives related to the LICSS program would create uncertainty in substance and timing for developers and aggregators looking to move ahead with LICSS projects. The Compact has the opportunity to be involved with LICSS projects that would be online and delivering savings in calendar year 2021 and believes it would be inequitable for low-income customers to miss out on such discounts because these proposed revisions act as a barrier to municipal aggregations offering a LICSS program.

Further, the Compact is also concerned about a potential unintended consequence of these proposed revisions, namely that the resulting barriers may effectively stop LICSS programs by municipal aggregations in their tracks, while electric distribution companies' LICSS programs move ahead. It would be very unfortunate, and contrary to the objectives of the Massachusetts Restructuring Act, if these discounts were only available to low-income customers on basic service, creating even more of an unlevel playing field in the marketplace and resulting in those

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<sup>3</sup> The average time of DPU approvals of municipal aggregation cases in 2020 was 17 months, with three pre-COVID cases decided on February 7, 2020 each taking 15 months.

customers migrating back to basic service.

Accordingly, the Compact requests that DOER strike Section 2(d) of the proposed revisions.

**B. DOER Should Clarify Its Proposed Revision Related to Multiple LICSS Discounts for a Low-Income Customer.**

The revisions in the LICSS Guideline include new language in Section 2(c)(iv), which states that the applicant must demonstrate to DOER that “a customer is not participating in more than one alternative CSS/LICSS programs.” The Compact interprets this revision to mean that a LICSS customer may receive multiple discounts from more than one LICSS project involving a municipal aggregator’s overall LICSS program. The use of the word “program” here signals to the Compact that, within its own LICSS program, there may be multiple LICSS projects and that a low-income customer could benefit from discounts from more than one of those projects.

For example, the Compact intends to offer (i) one or more LICSS project(s) that would offer one or more discounts to low-income customers in the Compact’s service territory, and (ii) LICSS projects hosted by individual Compact members (e.g., one Compact member-municipality) where all eligible low-income customers in that particular town would receive a discount from that municipal project as well.<sup>4</sup>

An alternative interpretation to this revision could be that a LICSS customer may only benefit from a single discount from one LICSS project, regardless of whether the municipal aggregation’s LICSS program involves more than one LICSS project that could apply to that low-income customer. Such an interpretation would seem contrary to DOER’s vision of the

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<sup>4</sup> The Compact can implement a LICSS project for one of its members as part of its LICSS program because the Town Meeting vote of each member to establish a municipal aggregation program (submitted with its original approved plan) states that the Town may “participate in a contract for power supply *independently or in joint action with other towns.*” Further, each member municipality voted in accordance with G.L. c. 40, §4A1/2 to operate its aggregation program collectively through the Compact.

LICSS program increasing participation of low-income customers in the development of community solar projects. See DOER PowerPoint, “SMART Program 400 MW Review,” at 19. It also would likely create a barrier to municipal aggregations offering LICSS programs given the resources necessary to develop and implement such a program.

The Compact requests that DOER clarify the intended interpretation of this proposed revision of the LICSS Guideline.

C. **DOER Should Modify the Proposed Revisions Related to Energy or Energy Credit Allocations.**

The revisions to the LICSS Guideline added a new Section 2(c)(ii), which states that “[t]he applicant must provide the following off-taker information to the Department,” which includes “[d]emonstration that the energy or energy credits are allocated to each customer on a monthly basis based on STGU production.”

The Compact does not take issue with demonstrating that energy or energy credits are allocated to the customer on a monthly basis. However, this revised language could be interpreted as requiring a monthly true up of the STGU production as well, which would – at best – severely limit how energy and energy credit allocations could be made to low-income customers. In many cases, these allocations are trued up using forecasted production on an annual or semi-annual basis. To comply with the revision as written, LICSS projects would have to true up every month, which may require having to set up a new rate every month. Such a process would be extremely complicated and overly burdensome. There is also some question as to whether this process would even be possible given existing utility billing systems and the time involved with suppliers notifying electric distribution companies about changes to the rates to be billed.

In addition, the use of “energy or energy credits” does not capture a structure where a

customer receives its discount in the form of a lower energy rate. The Compact suggests adding “or energy discounts” to that phrase throughout Section 2(c) to better account for all forms of the discount.

For these reasons, the Compact suggests that this language be modified to read:

- ii. Demonstration that: (a) energy, energy credits, or energy discounts are allocated to each customer on a monthly basis; and (b) allocations to each customer are based on STGU production.

The modified language would ensure that customers are receiving energy, energy credits, or energy discounts on a monthly basis, but would also allow municipal aggregations to true up based on forecasted production on an annual or semi-annual basis.

**D. DOER Should Clarify its Proposed Revisions Related to the LICSS Enrollment Process.**

The revisions proposed to Section 2(b) of the LICSS Guideline read: “[t]he Alternative CSS/LICSS Program must use an enrollment process consistent with M.G.L. c. 164, § 134 and any requirements established by the Department of Public Utilities.” Currently, there are no enrollment process requirements specific to LICSS programs by the DPU, and the DPU is not authorized to issue new directives on LICSS programs. See Section III.A.1. above. The Compact asks DOER to clarify its intent with this proposed revision. The Compact does not take issue with using an enrollment process for its LICSS program that is consistent with M.G.L. c. 164, §134 and its approved municipal aggregation plan, as well as the SMART Regulations.

**E. DOER Should Clarify its Use of the Term “Municipality” in Referring to Aggregations in its Proposed Revisions.**

DOER’s proposed revisions use the term “municipality” in some places (i.e., Sections 2(d) and 2(e)) to refer to a municipal aggregator. As noted in Section II, the Compact is the only multi-municipality aggregator operating in Massachusetts. The Compact asks that DOER

consider revising this language to take multi-municipality aggregators into account as well, perhaps by using the term “aggregator” in place of “municipality.”


#### IV. CONCLUSION

The Compact appreciates the opportunity to provide comments on the revised SMART guidelines and respectfully requests that DOER adopt the above recommendations prior to adopting the final SMART guidelines.

Respectfully submitted,

CAPE LIGHT COMPACT JPE

By its attorneys,



Rebecca F. Zachas

Audrey A. Eidelman

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