

**COMMONWEALTH OF MASSACHUSETTS**

**DEPARTMENT OF ENERGY RESOURCES**

**WRITTEN COMMENTS OF COLONIAL POWER GROUP, INC.  
IN RESPONSE TO PROPOSED REVISIONS TO THE SOLAR  
MASSACHUSETTS RENEWABLE TARGET (SMART) PROGRAM GUIDELINES**

Colonial Power Group, Inc. (“Colonial”) appreciates the opportunity to provide its comments with respect to the Department of Energy Resources’ (“DOER”) recent proposed revision to the *Guideline Regarding Alternative Programs for Community Shared Solar Tariff Generation Units and Low-Income Community Shared Solar Tariff Generation Units* (“Guideline”). Colonial provides advisory and management services to more than 80 Massachusetts municipal aggregation programs (each a “MAP”). Colonial assists these communities in the administration of their MAP and seeks to respond to each program’s energy-related policy goals. In recent years, many MAPs have sought to support renewable energy development and to seek climate and resilience benefits that may be secured through the expanded use of renewable energy. Another important goal of many MAPs served by Colonial is to secure benefits for low-income customers within their communities.

Colonial monitors regulatory and market developments to identify new resource options or approaches that will advance the energy and consumer goals of its clients, particularly those that are efficiently or appropriately achieved pursuant to a MAP. Colonial recognized nearly two years ago that municipal aggregation provided an efficient vehicle to implement or support Low-Income Community Shared Solar (“LICSS”) resources pursuant to the DOER SMART regulations. Municipal aggregation provides greater and more efficient opportunities to deliver energy savings to a larger number of low-income customers while also providing greater ability to monitor and confirm the actual delivery of such savings.

Colonial developed a preliminary approach to securing these benefits and consulted with low-income customer advocates, solar developers, and lenders for solar projects to determine that its approach was practical, financeable and would lead to meaningful advances in LICSS development.

Colonial presented its approach informally to the DOER approximately 18 months ago, which was based upon the DOER's initial SMART regulations and related Guideline. The review process continued through last year's modification of the SMART regulations and certain related Guidelines. Colonial believed that its approach conformed with policy goals and regulatory requirements. Colonial secured a favorable pre-determination letter from the DOER dated October 20, 2020 where the DOER confirmed that Colonial's structure would enable a Solar Tariff Generating Unit applicant to qualify for SMART incentive payments as a LICSS facility. Colonial then worked to match solar developers with many of the communities for which it provides advisory services.

The response has been broad and overwhelmingly positive from developers and communities. Colonial successfully secured projects ready to begin delivering discounts in Q1 2021 because the solar industry and Colonial understood and were able to rely upon, until now, clear and consistent regulatory policies and directives pursuant to statute and Department of Public Utilities ("DPU") precedent. By the end of 2020, Colonial was working with several solar developers interested in committing about 460 MW to Colonial's LICSS program by contracting with various MAPs. This translates into \$11 million/year in savings benefitting over 75,000 low-income families throughout the Commonwealth, along with supporting approximately \$460 million of solar generation investment and 6,300 jobs.

Colonial believes that the current DOER SMART Guidelines (revised as of October 8, 2020) are appropriate, sufficient, and provide the necessary clarity to enable MAPs and solar developers to move forward with LICSS projects. Colonial believes, however, that some of the proposed Guideline changes released by the DOER on February 12, 2021 are unnecessary, counterproductive and involve issues or concerns beyond the DOER's authority. As explained more fully below, the adoption of such language will only continue to frustrate the DOER's longstanding efforts to facilitate the participation of low-income customers in SMART program benefits.

Specifically, the DOER proposes to add the following new language in a new section 2)d): "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." This proposed addition is surprising, premature, and appears to anticipate a change with respect to policy relating to a MAP's authority to contract, seemingly based upon issues raised by the DPU in the City of Boston's Municipal Aggregation Plan docket, a matter which has not been investigated or resolved based upon any actual factual understanding of the Colonial transactional structure or appropriate evidence (see D.P.U. Docket No. 19-65, Chairman's Letter dated December 15, 2020). Colonial fully expects that these concerns can and will be resolved so that MAPs can deliver savings and developers enjoy greater certainty. However, Colonial urges the DOER to refrain from revising its Guidelines at this time, which will only frustrate any MAP from adopting a plan of action that allows an expedient path forward. Moreover, the DOER has no authority over the design and operation of aggregation plans beyond an early consultation. It would be counterproductive to add a duplicative and confusing requirement with respect to aggregation plans, the primary authority over which is with municipal officials after the review of the initial MAP plan by the DPU. .

While, again, this is not the proper forum to be heard on the substance of the root issue, nonetheless Colonial must note that the implicit assumptions reflected within the Guideline are not consistent with the Massachusetts General Laws. The DOER's proposed requirement in paragraph 2)d) that MAPs must include an LICSS program in its MAP plan is entirely contrary to M.G.L. c. 164 § 134(a). Section 134(a) allows MAPS to operate within the competitive market, availing themselves of electric power and energy services. The electric supply market is deregulated and rates are established through negotiations in an open and competitive market. Colonial carefully and diligently applied established precedent and these well-accepted practices in creating and refining its LICSS program. See City of Lowell, D.P.U. 12 -124 (2013). The DPU has repeatedly held that rate-setting within a municipal aggregation program rests entirely with municipal officials and is an area where the DPU has no authority or jurisdiction. It would be an absurd and entirely strained interpretation of the statute to require MAPs to file amended plans with the DPU for its approval to include or

anticipate any and every specific market-based initiative and opportunity that may present itself.

The ill-advised proposal to require MAPs to refile plans with the DPU for its review is not only wrong on law, but it is entirely impractical. It most likely will have the practical effect of causing DOER's innovative municipal aggregation structure to simply "die on the vine." As the table below illustrates, the DPU's approval process now requires 16 months or more from the date of filing to date of approval, including the review of fairly modest and previously reviewed changes.

#### **Municipal Aggregation Plan Filings**

<b>Year Filed</b>	<b>Order Status</b>	<b># Filings</b>	<b>Avg # Months from Filing to Order</b>
2019	Pending	5	aging range between 17 and 21 mos
2019	Issued	9	16
2018	Issued	9	9
2017	Issued	18	8
2016	Issued	43	6

Colonial has spent the last several months gauging interest from municipal officials to provide this offering to its low-income residents; the universal response has ranged from positive to exuberant. To date, the DPU has approved approximately 150 MAP plans. Not only is it not practical for MAPs to be required to secure approvals for amendments, the DPU, under this proposed process, should expect and plan to be inundated with filings of 100 or more MAP amendment requests, with each community vehemently requesting and expecting prompt approval so as to be able to go forward with such a beneficial opportunity. This approach as a matter of process is absurd and bad policy. In fact, the gravest and most likely threat to the DOER's thoughtful LICSS process is that officials from more than 100 MAPs will simply walk away.

Until this cloud of regulatory uncertainty created, in part, by the proposed change to the Guideline is lifted, solar developers and their financial backers will not "reserve" projects and wait for both DPU and DOER approval, where unknowns include: (1) timing of regulatory approvals; and (2) degree of investment confidence provided by whatever DPU ruling finally arrives. As such, in the best of circumstances, project development would most likely be unwilling to go forward until after a

project has received a final letter of determination from the DOER. The earliest Colonial might expect low-income participation is in mid-2024, if at all. By contrast, Colonial's program could be delivering discounted rates to low-income consumers right now - at a time when financial relief to families of limited means is acute.

Moreover, the declining compensation design of SMART means that a prolonged regulatory delay could reduce the number of megawatts that solar developers commit to LICSS. Prudently, solar developers will, instead, design their earliest projects to employ structures where financing can be secured now - that's not LICSS. It is likely that far fewer (if any) projects will ultimately be developed for LICSS because the later the SMART program gets into block allocations, the harder it becomes for project owners to commit to LICSS. The longer the regulatory review period, the later it becomes before developers will once again consider LICSS as an option.

DOER can and should address these concerns. Colonial recommends that the DOER delete all of proposed paragraph 2)d) from its proposed updated Guideline. Alternatively, the DOER could delete the language "CSS/LICSS program included in a" from the proposed addition. This would result in a requirement that the particular arrangement be "consistent" with the approved plan in order to be eligible to contract in a manner to secure LICSS incentives. A variation to this alternative would be to delete the same language, but, instead, revise by inserting language that the agreement is "not inconsistent" with the approved plan. This latter alternative is preferred as it affords aggregation plans and developers greater flexibility in order to secure the substantial benefits from LICSS.

Colonial remains extremely optimistic about the DOER's SMART program, and especially with the clarifying changes the DOER finalized in the fall of 2020. The DOER was wise to recognize that municipal aggregation programs could be effective vehicles to finally affect significant consumer participation from families of limited means. Colonial acknowledges that there may be open questions with the DPU that will be necessary to resolve before MAPs will be fully cleared to deliver rate discounts to its participating low-income consumers. Consequently, the changes proposed to

the DOER Guideline are premature and could interfere with the ability of stakeholders to resolve any DPU-related concerns. The above-described changes to the Guideline are unnecessary, beyond the authority of the Department, create confusion and risk undercutting the substantial policy benefits available finally after so many years of effort. Colonial respectfully requests that the DOER promptly resolve any questions on the terms of the Guideline and adopt the suggestions raised herein.

Dated: March 5, 2021