

February 23, 2018

Judith Judson, Commissioner  
Massachusetts Department of Energy Resources  
100 Cambridge Street 10th Floor  
Boston, MA 02116

**Re: SMART Guideline Comments**

Dear Commissioner Judson:

Dynamic Energy first would like to extend our continued appreciation for the Department of Energy Resources staffs' hard work and commitment to excellence in developing the SMART regulation and also these guidelines. As demonstrated by Dynamic Energy's recent success in the SMART Block 1 RFP, we are fully invested in and committed to developing and executed on a diverse pipeline of projects under the forthcoming SMART regulation, helping the DOER and Baker-Polito Administration achieve their clean energy goals.

Please see below our comments on the SMART guidelines. We also are members of SEIA, NECEC, and other industry agencies, and fully support their comments that will be submitted.

**1) Category 1 Land Use – Solar-Specific Zoning**

The answer provided to the guideline question of "What is a solar overlay district? What is meant by complying with established local zoning that explicitly addresses solar?" conflicts with the language of 225 CMR 20.05(5)(e)(1)(b)(vi). That regulation states that ground-mounted STGUs are eligible for Category 1 treatment if they are ground mounted and "sited within a solar overlay district or on land that complies with established local zoning that explicitly addresses solar or power generation." DOER's proposed guidelines interpret this clause to mean that only projects sited within a solar overlay district or that are sited by as of right siting qualify as Category 1. If a project must obtain a "variance, special permit, waiver or other discretionary approval," the DOER guidelines state that the project does not qualify as Category 1. This interpretation both contradicts the plain language of 225 CMR 20.05(5)(e)(1)(b)(vi) and fails to account for the fact that special permits are often part of established local zoning that explicitly addresses solar.

DOER's guidance that only "as of right" siting qualifies for Category 1 outside of a solar overlay district improperly limits the scope of land included in 225 CMR 20.05(5)(e)(1)(b)(vi). Nothing in the phrase "complies with established

local zoning that explicitly addresses solar” suggests that only zoning laws providing as of right siting qualify, or that zoning laws requiring discretionary approvals are automatically disqualifying. This interpretation is particularly unreasonable in light of how Massachusetts towns actually administer their solar zoning bylaws. Many Massachusetts towns have established local zoning bylaws that explicitly address solar as an allowable use. Each town has discretion and may differ, however, in how it governs the design and site use for ground-mounted solar under its local zoning bylaw. Some towns require a site plan approval but no special permit in all zones. Others require both a site plan approval and a special permit in all zones. Although the procedures are different, the end purpose of these bylaws is the same – to identify and approve sites of all zoning designations that the local community considers appropriate for solar development. Under DOER’s proposed guidelines, projects located in these two categories of towns would be treated differently for purposes of the greenfield subtractor, merely because of the administrative procedure the towns chose for their solar bylaws. STGUs on land in towns with only site plan approval could qualify as Category 1, whereas, STGUs on land in towns that also require a special permit could not. The language of 225 CMR 20.05(5)(e)(1)(b)(vi) does not support this arbitrary distinction.

Dynamic Energy’s core concern with the DOER’s proposed clarification in the guidelines is that it imposes significant economic detriment on STGUs merely because the town adopted a solar zoning bylaw requiring a special permit, variance, or waiver, without advancing in any meaningful way the Commonwealth’s policies on appropriate land use. If a solar developer complies with the town’s established and explicit approval process for ground-mounted solar, it has complied with both the letter and spirit of 225 CMR 20.05(5)(e)(1)(b)(vi). The mere fact that a town’s solar bylaw requires both a site plan approval and a special permit does not render the subject site a poor location for ground-mounted solar that should be subjected to the greenfield subtractor.

Finally, Dynamic Energy also notes that we sought clarification on this subject in February 2017 directly from the DOER. In a chain of emails, Dynamic Energy asked Kaitlin Kelly of the DOER what is the definition of “specifically for solar/power generation?” She replied, “this means *any solar zoning bylaw*, such as by right zoning.” Relying on the plain language of the regulations and this guidance, Dynamic Energy has been prioritizing the siting and development of projects in towns with solar-specific bylaws as a means to appropriately site STGUs, comply with local approval processes, and thereby avoid greenfield subtractors. If the proposed guideline is not revised to allow STGUs that comply with established local zoning that explicitly addresses solar, with or without a special permit, variance, or waiver, to qualify for Category 1, the result will be numerous sites throughout Massachusetts that are appropriate and logical locations for ground-mounted solar projects not being utilized due to STGU’s being unnecessarily economically burdened.

## **2) Project Segmentation – Contiguous when separated by road**

The answer provided to the proposed guideline question of “What does contiguous mean?” establishes a new rule that is not supported by the plain language of 225 CMR 20.05(5)(f). According to the proposed guideline, parcels that are separated by a public or private way will not be deemed contiguous if they are under separate ownership. However, the parcels *will* be considered contiguous if they are under common ownership. This establishes an arbitrary distinction based on ownership rather than the actual location of the parcels. Under a plain reading of the word “contiguous,” location should be the only criterion. Furthermore, the distinction established by the proposed guideline would be easily circumvented. Any developer or prospective project owner interested in building projects on parcels separated by a public way, for example, could simply purchase the land on one side of the public way instead of leasing it from the current owner. This would add unnecessary additional costs to the projects, without advancing the Commonwealth’s land use policies in any meaningful way.

If this new rule unfairly impacts projects on parcels with common ownership, Dynamic Energy will experience significant economic loss on development capital spent on projects that we understood not to be contiguous based on the current regulation.

## **3) Statement of Qualification Reservation Period – Initial Application Period**

Section 3) a) ii) of the guideline should clarify that systems over 25kW will be ordered according to the execution date **by the project** of the Generation Unit’s Interconnection Service Agreement (ISA). The execution date should not be determined by when the EDC countersigns the ISA, which can take weeks and is completely out of the project/developer’s control.

Sincerely,

John Motta  
VP of Business Development  
Dynamic Energy