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RE : Emergency Regulations, 225 C.M.R. 20.00, et al.; Establishing a Solar Massachusetts Renewable Target (SMART) Program

Dear Ms. Kelly :

On June 5, 2017, the Department of Energy Resources ("DOER" or "Department") issued emergency regulations ("Emergency Regulations") to establish the Solar Massachusetts Renewable Target Program (the "SMART Program"). The SMART Program is a renewable portfolio standard ("RPS") carve-out to promote further development of solar photovoltaic generation resources ("PV") within the Commonwealth. 225 C.M.R. § 20.00 *et al.* DOER now proposes permanent adoption of the Emergency Regulations, and began a formal rulemaking process as required by G.L. c. 30A. DOER held public hearings on July 10 and 11, 2017, and requested written comments to be filed on or before July 11, 2017. Pursuant to DOER's request, the Office of the Attorney General ("AGO") submits these comments for the Department's consideration.

The Green Communities Act ("GCA") of 2008 amended the existing RPS Program to authorize DOER to establish a "carve-out" RPS requirement targeted at stimulating new development of small, on-site renewable energy generation in Massachusetts. *See* G.L. c. 25A, § 11F(g). DOER previously invoked that authority, establishing a carve-out program exclusively for the development of PV ("Solar Carve-Out Program") in 2010. *See id.* § 11F(h). Pursuant to 225 C.M.R. § 14.00 *et seq.,* DOER implemented the Solar Carve-Out Program in two phases, known as the Solar Renewable Energy Certification ("SREC") and SREC II programs. To date, those programs are responsible for at least 1,641 MW of installed capacity.[1]

In 2016, the Legislature directed DOER to adopt regulations in order to develop a statewide solar incentive program to continue solar installation in the Commonwealth, but at a lower cost than the SREC/SREC II programs. St. 2016, ch. 75, Section 11. Prior to issuing these Emergency Regulations, DOER conducted a stakeholder process to solicit input on the program design. DOER presented a straw proposal on September 23, 2016, and held weekly large-group and break-out group meetings over the course of five months. In October, DOER solicited written comments from stakeholders on its proposal, and made a final presentation on January 31, 2017 that reflected stakeholder comments. The AGO participated in the stakeholder process and appreciates the opportunity to provide these comments and recommendations on the Emergency Regulations prior to their final promulgation.

[1] *See* Doer's RPS Solar Carve-Out II Qualified Renewable Generation Units (Updated June 21, 2017) and RPS Solar Carve-Out Qualified Renewable Generation Units (Updated June 23, 2016). http://www.mass.gov/eea/energy-utilities-clean-tech/renewable-energy/solar/rps-solar-carve-out/current-status-of-the-rps-solar-carve-out-program.html; http://www.mass.gov/eea/energy-utilities-clean-tech/renewable-energy/solar/rps-solar-carve-out-2/current-status-solar-carve-out-ii.html

I. COMMENTS

The AGO strongly supports the continuation of solar incentives to help the Commonwealth achieve its legislative mandate to reduce greenhouse gas emissions and to further diversify electric generation energy resources. The Emergency Regulations implement a third generation solar program that includes new measures to protect consumers and the environment, provides predictability for the solar development market, and accounts for the totality of all ratepayer solar program contribution. Consistent with the Legislature's mandate, the SMART Program will achieve those goals at a cost that is lower than the cost of the SREC and SREC II programs. The AGO supports the move towards a tariff program flexible enough to capture savings as the cost of solar installations continues to decrease. Specifically, the AGO endorses the inclusion of: (1) a formula to establish Base Compensation Rates on the results of a competitive solicitation (225 C.M.R. 20.07(3)(a)); (2) a four percent reduction of all Base Compensation Rates and Compensation Rate Adders with each new capacity block (225 C.M.R. 20.07(2)); and (3) limitations on the amount of Compensation Rate Adders a Solar Tariff Generation Unit may receive (225 C.M.R. 20.07(4)(e)).

In addition, the AGO appreciates the signal that the Land Siting Criteria sends to preserve the Commonwealth's natural resources and open spaces. 225 C.M.R. § 20.05(5)(e). Further, the AGO supports the exclusion of Distribution Company-owned Solar Photovoltaic Generation Units from the SMART Program because electric utility company projects already receive ratepayer support and should not take up block capacity intended to spur additional development. 225 C.M.R. § 20.05(5)(h). Finally, the AGO is pleased that the SMART Program links the payments from this incentive with credit value or compensation provided for the energy

produced by the unit under 220 C.M.R. 8.00, 220 C.M.R. 18.00 or some other mechanism. 225 C.M.R. § 20.08(1).

The AGO recommends certain revisions to the Emergency Regulations.

A. The Department Should Expand the Scope of the Customer Disclosure Requirements

A significant addition to the SMART Program is the requirement that DOER develop a customer disclosure form.[2] As participation in the Commonwealth's solar programs continue to expand, it is critically important that financing, terms, and conditions of solar generation units are transparent and understandable. The proposed customer disclosure form is a critical consumer protection otherwise lacking in the market today. The AGO recommends that the Department make two changes to strengthen consumer protections.

First, the AGO recommends that the DOER require SMART Program applicants to include in their qualification application not only a standard customer disclosure form, but also a mechanism for demonstrating individual consumer acknowledgement and receipt of the customer disclosure form.

Second, the AGO recommends that the DOER expand the disclosure requirement to all Statement of Qualification Applications attached to a Unit providing a benefit to an end-use customer, in other words, to ensure that each end-use customer contracting with any type of solar developer receives a disclosure. Currently, the Emergency Regulations only require that the disclosure form be provided to customers that *purchase* their Solar Tariff Generation Unit. 225 C.M.R. § 20.06(1)(a). However, as the SMART Program recognizes, end-users enter into many types of contractual relationships to obtain the benefit of a Solar PV installation, including Unit

[2] 225 C.M.R. § 20.06(1)(a)1. "The contract shall also include an attachment in a form to be developed by the Department to provide consumer information including, but not limited to, contract pricing for the length of the agreement, complete system cost information, operation and maintenance responsibilities, disposition of associated RECs and tariff terms, and anticipated production."

leasing arrangements, power purchase agreements, and community shared solar contracts. *See*, *e.g.*, the recognition of different generation unit types in determining Base Compensation Rates and Compensation Rate Adders, 225 C.M.R 20.07(3)(b) and C.M.R 20.07(4). Thus, the customer disclosure form should be provided to all customers associated with a Solar Tariff Generation Unit or a Standalone Solar Tariff Generation Unit, regardless of capacity size or ownership structure, including customers who (1) purchase a facility outright; (2) participate in a Community Shared Solar Tariff Generation Unit; or (3) engage in another type of third-party ownership structure.

The DOER should make the customer disclosure form a stand-alone filing requirement, similar to the requirement to file an executed contract. The DOER should also add the customer disclosure form requirement to 225 C.M.R. § 20.06(1)(f), Special Provisions for Low Income Community Shared Solar Tariff Generation Units. Similarly, a new paragraph 225 C.M.R. § 20.06(1)(h) "Special Provisions for Community Shared Solar Tariff Generation Units" should be added to the "Statement of Qualification Application" section in order to apply the customer disclosure form requirement that unit type. Further, as Community Shared Solar Tariff Generation Units are more likely to experience fluidity in their customer relationships than other ownership structures, the DOER also should require such Units to file new or changed customer forms annually pursuant to this new Special Provision.

B. <u>The One-Time Competitive Procurement, With Adjustments, Will Support a SMART Program Tied to Market Realities</u>

As noted in the AGO's October 31, 2016 comments, the AGO strongly supports the inclusion of a One-Time Competitive Procurement ("Procurement") as a mechanism to set Base Compensation Rates based on industry information. In order for Distribution Companies and the

DOER to get the most useful results from the Procurement, however, the AGO recommends several adjustments to the Emergency Regulations, 225 C.M.R. 20.07(3)(a).

First, the Emergency Regulations appear to require each Distribution Company to issue its own request for proposals ("RFP"), with the three RFPs seeking 100 MW of capacity, in the aggregate. To make this intent clear, the Department should revise the second sentence of the first paragraph of §20.07(3)(a) as follows:

"The Distribution Companies will ~~collectively~~ *individually* procure, *in the aggregate*, approximately 100 MW of energy, capacity, RPS Class I Renewable Generation Attributes, …"

Further, the DOER should strike the word "jointly" from §20.07(3)(a)1.

Second, the AGO recommends several modifications to the RFP process to increase the likelihood that the projects selected by the Distribution Companies ultimately get built. One risk of selecting projects based on price alone is that the least cost project may not necessarily be commercially viable. Selecting a project that may never get built harms not only the Distribution Companies, but other projects that were not selected. Thus, DOER should revise §20.07(3)(a)2.i to explicitly require that a bidder submit its performance deposit with the bid:

> "i. provide a performance guarantee deposit *at the time of bid submittal* to the Distribution Company or the solar Program Administrator, the amount and parameters of which shall be established in consultation with the Department, but which shall not exceed $25 per kW of capacity."

In addition to securing the performance deposit, the Procurement process itself provides a mechanism for the Distribution Companies to weed out questionable applicants. To that end, the AGO urges a rigorous eligibility threshold review by the Distribution Companies pursuant to §20.07(3)(a)2.g and the final paragraph of §20.07(3)(a)2 (which should perhaps be marked as its own paragraph, §20.07(3)(a)2.j.).

Third, the DOER should modify the regulations to clarify the process for determining the "Weighted Average Clearing Price." The regulations appear to include the Weighted Average Clearing Price as one step in the Procurement process.[3] It also appears that DOER is responsible for completing this step, while the Distribution Companies have the responsibility for the other steps in the Procurement process. 225 C.M.R. 20.07(3)(a)(9). Yet, the Weighted Average Clearing Price step seems intended to occur *after* the individual Distribution Company procurements. To make clear that this is a separate step taken by the DOER after the Procurement process is over, the Department should make this paragraph its own section within §20.07(3) rather than including it with Procurement step process in paragraph §20.07(3)(a).

C. The Department Should Not Require Distribution Companies to Procure Capacity under the SMART Program

The Emergency Regulations include capacity as a product that the Distribution Companies must procure pursuant to 222 C.M.R. 20.07(3).[4] Given the legal uncertainties regarding state mandates of capacity procurement, the AGO recommends DOER to consider the full implications of this requirement. The AGO agrees that ownership of the capacity associated with a project should ensure the greatest ratepayer benefits. The AGO suggests, however, that rather than through a legal mandate, this be achieved by allowing the Distribution Companies to determine whether and how to purchase capacity. The Distribution Company does not need this

[3] Weighted Average Clearing Price. For the purposes of establishing statewide Base Compensation Rates under the Capacity Blocks established in 225 CMR 20.05(3), a weighted average of the Clearing Prices for Solar Tariff Generation Units with capacities between 1 MW and 2 MW specific to each Distribution Company shall be taken. The weight given to each Clearing Price shall be proportional to the total electric load served to Massachusetts End-use Customers by the Distribution Company in calendar year 2016.

[4] "The Distribution Companies will collectively procure approximately 100 MW of energy, capacity, RPS Class I Renewable Generation Attributes, and any Environmental Attributes associated with the solar photovoltaic generation produced by the Solar Tariff Generation Units, provided, however, that compensation for energy and capacity will be established and paid pursuant to tariffs approved by the DPU under 220 CMR 8.00."

DOER directive to include capacity as an eligible product in its RFP. The AGO expects capacity ownership to be covered by the related tariff to be filed by the Distribution Companies at the Department of Public Utilities, similar to how capacity is handled to net metering (*See* D.P.U. 12-01-A). Including a requirement for the Distribution Companies to solicit for capacity as part of this state regulatory construct places unnecessary risk on the SMART Program where alternative solutions would reach the same result.

D. Review of 320 MW Adder Caps

To ensure that we continue to incentivize the best mix of projects, the AGO recommends that DOER review the Adder Caps upon issuing Statements of Qualification for 400 MW of Solar Tariff Generation Units. 225 C.M.R. 20.07(6). The SMART Program limits to 320 MW the amount of Compensation Rate Adders granted to any one category of eligible units. 225 C.M.R. 20.07(5). The purpose of doing so appears to be the desire for diversity in the portfolio of projects incentivized by the program and to further limit costs. The AGO is concerned, however, that as the SMART Program matures, the adder caps may result in unintended negative consequences. For example, if one of the least expensive categories fills quickly and the desire to build additional capacity remains, perhaps the cap for that category should be lifted as a means of gaining more of the least expensive type of generation (*i.e.*, Building Mounted Solar Tariff Generation Units). Alternatively, if one category has a higher adder value but offers access to a population of electric customers otherwise unable to access solar on its own, perhaps a modest cap lift, coupled with additional reductions in the adder value would be appropriate (*i.e.*, Community Shared Solar Tariff Generation Units). Such scenarios should be explored as the SMART Program matures. The DOER plans to conduct a review of Base Compensation Rates

and Compensation Rate Adders upon issuing Statements of Qualification for 400 MW of Solar Tariff Generation Units. 225 C.M.R. 20.07(6). The AGO suggests that DOER include Adder Caps as part of this review.

E. Length of Compensation Rate Terms

Under the Emergency Regulations, Solar Tariff Generation Units with capacities larger than 25 kW are eligible to receive compensation under the SMART Program for 20 years. 225 C.M.R. 20.07(1). As the AGO stated throughout the stakeholder process, 20 years is simply too long to ask ratepayers to support these units. The AGO again requests that the DOER reduce the length of the compensation rate term.

F. Suggested Minor Corrections and Clarifications

The AGO offers the following additional suggested corrections and clarifications to the Emergency Regulations:

- §20.05(1): Add "pursuant to 225 C.M.R. 20.05(5)(b)" to the end of the sentence. The term "new solar generating capacity" is not otherwise defined in the regulations, but the intention is likely to limit SMART Program eligibility to units according to the Commercial Operation Date provided later in §20.05(5)(b).

- §20.06(1)(c): In order to clarify the requirement that all Solar Tariff Generation Units must include the "Authorization to Interconnect" in their Statement of Qualification Application, this provision should be elevated to §20.06(1)(a). As currently drafted, the requirement gets lost among the listed prerequisites for "special provisions" and the like, perhaps confusing some applicants to misunderstand that this provision does not apply to their project. The Authorization to Interconnect is an important milestone to reach in maintaining the integrity of the block program and should be reflected as such in the regulation.
- §20.06(1)(e)2. and 3: The use of the phrase "shall be incentivized" is unknown and should be defined or further explained.

- §20.06(1)(e)5: The phrase "rolling year" should be defined or further explained.

- §20.07(3)(a)(7): Replace the term "award notification," a term not used anywhere else in the Procurement process, with the word "selection."

- §20.07(4)(c)1: There appears to be a conflict in the application of the four percent Compensation Rate Adder decline (§20.07(2)) for the Energy Storage (§20.07(4)(c)1.). To clarify, §20.07(4)(c)1. Should be amended to include new language after $0.045/kWh: ", which shall then decline by four percent per Capacity Block, pursuant to 225 C.M.R. 20.07(2)."

II. CONCLUSION

The Attorney General respectfully recommends that DOER adopt the recommendations made within these comments.

Respectfully submitted,
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