

October 13, 2021

**Statement of Qualification Reservation Period Guideline
Ver September 22, 2021
Comments Sec 9(b) – Public Entity STGU**

Introduction

The definition of Public Entity Solar Tariff Generation Unit (Public Entity STGU) contained in 225 CMR 20.02 allows for many different arrangements to qualify for the Public Entity adder. The specific arrangement depends on whether the STGU is site on private or publicly owned land and, in each of those cases, whether the STGU is owned by a public entity, operated by a public entity, or whether the output of the STGU is sold to a public entity.

As a consequence, there are six different arrangements under which an STGU could qualify for the public entity adder. For greater certainty to developers in formulating these arrangements and applying for a Statement of Qualification (SOQ) and subsequent Tariff Enrollment, the Statement of Qualification Reservation Period Guideline should be clear on the specific information required in each arrangement to qualify for the Public Entity adder.

These comments focus on two areas where clarification and correction is needed.

Power Purchase Agreement

Take the cases of an STGU sited on publicly owned property, or privately owned property, where the Owner (i.e, the entity with legal ownership of the STGU) has assigned 100% of its output to public entities, a public entity located in the municipality in which the STGU is sited, respectively. The current text of the guideline is as follows:

“This is demonstrated through solicitations for a power purchase agreement by the municipal or government entity.”

This formulation is inconsistent with 225 CMR 20.02 as it implies that it is the responsibility of the public entity buyer of the STGU output – rather than the Owner with regulatory responsibility to assign its output - to arrange for a PPA and do so via a solicitation.

To remain consistent with 225 CMR 20.02 we therefore recommend that the Guideline be clear that in the cases referenced above, the need for a demonstrated solicitation by the municipal or government entity does not apply.

Public Entity Operations

Take the case of an STGU sited on privately owned property and operated by the municipality in which the STGU is sited.

The current text of the guideline states that, in addition to compliance with 225 CMR 20.06(1)(c), the following must be demonstrated to qualify for the Public Entity adder:

“an operations and maintenance agreement originated by the municipal or government entity to operate and maintain the facility”

This text raises several issues:

Firstly, the use of word “originated” suggests that the public entity must a) undertake some form of solicitation for services; and b) the contract to operate and maintain the facility is necessarily awarded to a third party pursuant to that solicitation.

With respect to a) we note that M.G.L 30(B) Sec. 33 provides an exemption to the competitive procurement requirements under M.G.L 30(B) where “energy services” are being procured. We further note that under M.G.L 30(B) Sec. 33, within 15 days of executing an energy services contract a copy of the contract and a description of the process used to execute the contract must be provided to the DPU, DOER and Office of the Inspector General. Reporting to these governmental bodies at such an early stage in the development process appears premature. It is also premature when considering that a contract to construct the STGU – a stage antecedent to operations and maintenance – is typically not executed by the time of the Statement of Qualification application step.

With respect to b) we note significant municipal engagement and partnership would occur with respect to the solar systems located in their communities if municipal employees were given the opportunity to be trained and perform operations and maintenance work themselves. We understand that enhancing such engagements and partnerships is a policy rationale for the Public Entity adder.

We therefore suggest the removal of the requirement for solicitation for energy services, the addition of the option for the public entity to perform those services itself, and the requirement for a binding contract to be deferred to the Tariff Enrollment step.

In Sec 9(b)(vi) amend text with:

“operations and maintenance agreement(s) for a municipal or government entity, or a subcontractor working for a municipal or government entity, to operate and maintain the facility”

In Sec 9(b)(iii) amend text with:

Column: Required Documentation - Statement of Qualification Application
“Letter of Intent for Operations and Maintenance of the STGU”

Column Required Documentation - Interconnection and Tariff Enrollment
“Contract for Operations and Maintenance of the STGU”