

April 2, 2018

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

RE: SMART Community Solar Customer Disclosure Forms

Dear Commissioner Judson,

Nexamp sincerely appreciates the opportunity to provide comment on the draft Community Solar Customer Disclosure Form ("Disclosure Form") as released by the Department of Energy Resources ("DOER") on March 12, 2018. Nexamp is a Massachusetts-based developer, owner, and operator of solar generating assets. Under SREC II and in anticipation of the SMART program, Nexamp has invested heavily in the development of community solar assets and the corresponding infrastructure necessary to acquire and maintain participating customers. To date, Nexamp has ~50 MW of community solar projects operating or awaiting interconnection, with dozens of additional projects to be constructed under SMART.

To the extent that the Disclosure Form is intended to provide transparency and avoid confusion for prospective community solar customers, and to promote "best practices" among community solar providers, Nexamp wholeheartedly agrees with the goals of the customer disclosure requirements under SMART. However, Nexamp has some substantial concerns with the current draft of the Disclosure Form, which we hope to address through these comments. These concerns include both the content of the current draft Disclosure Form, as well as the process through which it was developed, which may not have incorporated adequate consultation with community solar providers or the project financing community.

Nexamp's primary concern is ensuring that the Disclosure Form is designed in a manner that accomplishes its intended purpose (namely, to provide customers with a uniform, transparent resource) without imposing an undue burden or excessive costs on community solar providers. Further, we believe that the disclosure requirements and Disclosure Form itself should encourage best practices among community solar providers by promoting the advancement of community solar products that are most compelling and least burdensome to ratepayers. As discussed herein, Nexamp has several suggestions for improving or otherwise simplifying the Disclosure Form to better reflect the realities of the community solar market in Massachusetts. Without significant changes, we are concerned that the Disclosure Form may ultimately have unintended consequences that would both increase costs and discourage the adoption of more innovative, consumer-friendly community solar products.

**General Comments:**

Clearly, the Disclosure Form is intended to provide a uniform, transparent resource for customers. It is equally important that the DOER consider what an ideal community solar product would look like from the perspective of customers. Many companies, including Nexamp, developed their product specifically with the customer experience in mind. Our community solar product, *Solarize My Bill*, was designed with three principles in mind:

**Equity:** Nexamp believes that all ratepayers in the Commonwealth should have access to the potential savings benefits of community solar. Therefore, Nexamp does not currently require credit checks of any kind, and all ratepayers are eligible to enroll in our community solar projects on a rolling basis so long as capacity is available.

**Flexibility:** Nexamp envisions a community solar market that enables a “solar-as-a-service” platform. We recognize that there are any number of reasons why a customer may need to “unenroll” from a community solar project, and that contracts of twenty years or more are simply not realistic for the majority of ratepayers in Massachusetts. Therefore, Nexamp does not currently require long-term contracts, and customers simply need to provide adequate notice before cancelling or transferring their subscription.

**Value:** In order to attract and retain customers, Nexamp understands that a compelling value proposition is required, and that potential savings should compare favorably to expected savings for those customers who are able to install a solar array on their property. Currently, and to date, Nexamp is able to offer all subscribers a fixed discount of at least 15% for each dollar of credits applied to bills of participating customers.

In short, Nexamp has deliberately developed a community solar product that can effectively guarantee savings, through a *fixed percentage discount* model, while also ensuring maximum flexibility for our participating customers. Through ongoing investments into internal infrastructure and our online customer portal, we seek continuous improvement of the customer experience, and aim to enhance our product for customers in the coming years.

We recognize that the Solarize My Bill program is not necessarily representative of all community solar products currently available to Massachusetts ratepayers. For instance, we understand that other community solar providers may require *fixed rate* structures (whereby customers are delivered credits at a fixed \$/kWh rate) and *long-term contracts*, in order to satisfy lender or other financing demands. In cases where strict lender requirements translate into similarly strict contractual requirements for participating customers, we appreciate the need for explicit and transparent disclosures as currently contemplated by the DOER, but would suggest that the Disclosure Form should not *assume* this business model.

Finally, we certainly recognize the need to protect consumers against potential harm caused by certain deceptive marketing practices not entirely uncommon in the Commonwealth, particularly on the part of some competitive suppliers. However, it is important to note that *community solar providers are not, generally speaking, competitive suppliers*, and that concerns about their marketing practices are not necessarily applicable to the burgeoning community solar market. We caution against any Disclosure Form requirements that would tend to create a “lowest common denominator” playing field for providers, whereby the practices of the least customer-friendly providers dictate the requirements placed upon the most customer friendly and more innovative providers.

To avoid this scenario, Nexamp encourages DOER to adopt either i) a simplified Disclosure Form and separate guidelines that impose more stringent business practices on providers, or ii) a Disclosure Form that is generic to the community solar program more broadly (i.e. not necessarily project or provider specific), which directs customers to be aware of certain key terms and conditions with their provider. In any event, the Disclosure Form should not be an unnecessary roadblock to efficient and responsible sales practices among providers. Any Disclosure Form should provide for more flexibility to

refer directly to an underlying contract with customers, as applicable, which may more accurately outline unique product terms and conditions with individual providers. Finally, in order to provide for a sensible implementation of any Disclosure Form requirements, and to avoid excessive customer acquisition costs on the community solar market, providers must have the ability to incorporate the customer disclosure process into their normal sales cycle. Therefore, it should be clear that providers may append any Disclosure Form to their standard customer contract, as applicable, and may obtain digital signatures from their customers (e.g. through a product like DocuSign).

Further considerations and suggestions for Disclosure Form improvements are provided below, by section.

### **Introduction/Description:**

The current draft of the Disclosure Form includes the following pronouncement to prospective customers:

*\*Community Shared Solar Participants do not directly purchase solar electricity. Instead, participants purchase credits in the form of Net Metering Credits or Alternative On-Bill Credits, **which may or may not reduce customers' total electricity costs depending on market conditions.***

As stated above, Nexamp is concerned about the potential of the Disclosure Form to discourage, or at least weaken, the most innovative and consumer-oriented business models. Due to the nature of Net Metering Credits or Alternative On-Bill Credits (as anticipated) as monetary on-bill credits, it is certainly *possible* for providers to ensure that total electricity costs are reduced by participating in a community solar project, and therefore shield customers from rate risk. In fact, many business models, including Nexamp's, are designed to guarantee savings for participating customers during the term of their participation. While we recognize the desire of DOER to alert customers that savings are not necessarily guaranteed by all providers, we recommend that the clause in bold above is removed from the disclosure form.

**Customer Information:** Generally, the Disclosure Form should not require personal customer information in excess of that which is required for the utilities to allocate customer credits. For example, some customers prefer not to provide their home phone number, nor do we necessarily require it to enroll them in our community solar program. It may also be useful to include utility and load zone information, though this information is generally captured in the individual customer contracts.

**Customer ID:** We assume this is intended to reflect the customer's utility account number. However, we also note that many customers, particularly commercial customers, will have multiple utility accounts enrolled in a given community solar projects (provided they don't collectively exceed the 25kW threshold).

**Provider Information:** Nexamp has no concerns with the information required in this section, but would note that certain providers utilize third parties to enroll community solar subscribers. Additionally, it should be clear that the "Company" name may change as providers assign customers to specific projects, which are most often organized as special purpose entities for the purposes of financing. For practical purposes, it is critical that providers are able to assign any Disclosure Forms without the consent of the customer.

**System Information:** For community solar developers with a pipeline of multiple projects in a given utility territory, it is common practice to enroll customers by utility and load zone, but not necessarily assign them to a specific project at the time of enrollment. Generally, where developers enroll customers directly, this is due to a desire to ensure that customers begin receiving credits on a first-come, first-served basis. Because individual projects have lengthy and often unpredictable interconnection timelines, it is important to maintain provider flexibility to assign customers to projects in a manner that ensures minimal wait time for each customer enrolled.

**Estimated Number of Subscribers to the Project:** This information does not seem to be relevant to any customers, individually, and can be expected to change substantially based on customer mix (e.g. commercial vs. residential) and, in theory, “energy type” (e.g. net metering credits or alternative on-bill credits).

**Subscription & Cost Information:** Nexamp acknowledges that this section contains information most critical to the customer’s understanding of the community solar product, the value proposition, and potential risks and liabilities. However, Nexamp also notes that this section has the potential to be most confusing for customers, and is particularly likely to result in the “lowest common denominator” issue framing cautioned above. Therefore, we respectfully suggest that a better approach would be for DOER to instead develop generic descriptions for the concepts introduced in this section for the benefit of customers, and direct providers to address these concepts explicitly in their standard contract terms and conditions, as applicable.

**Subscription Model:** This is vague, and likely difficult to standardize. There are any number of “subscription models” at the disposal of providers (including fixed percentage discount, fixed price discount, fixed price with escalator, upfront payment, etc...). A better approach may be for a provider to offer a succinct description of the subscription type as they deem most appropriate, within guidelines established by DOER.

**Contract End Date:** This seems to assume a fixed length contract, versus an ongoing subscription (“solar as a service”). For example, if a customer has the ability to opt out or remain a subscriber for as long as the project is enrolled under SMART, it would be inaccurate or misleading to force a provider to say that their contract term is 20 years. A better approach may be to ask for “Minimum Contract Term.”

**Option to Renew:** This assumes a contract type that is not necessarily reflective of the market for community solar customers. For providers which do not lock in customers for a specified contract length, this would not be applicable.

**Starting Rate:** This assumes a contract type that is not necessarily reflective of the market for community solar customers. Nexamp community solar customers, for example, offer a standard fixed-percentage discount. For Net Metering and Alternative On-Bill Credit project alike, this “starting rate” will float with the price of electricity from the utilities, but the price paid by subscribers to community solar providers is based simply on the dollar value of credits allocated to the customer account (e.g. for each \$1.00 allocated to a customer account, the customer would owe the provider \$0.85). Further, because credits are currently allocated as a monetary credit (vs. volumetric), translating credits into a kWh charge is generally not required, nonsensical, and would likely cause customer confusion and unnecessary administrative costs.

for many providers. Finally, would seem to be unreasonable and irresponsible for providers offering a fixed discount product to effectively predict utility rates many months in advance of a projects' interconnection date, which this line item would otherwise seem to require.

**Rate Increase and Frequency:** Similarly, unless a provider is offering a fixed-rate product, any rate increase - and the frequency thereof - is completely outside the control of the provider. Forcing providers to address this issue in a customer disclosure form, versus their standard sales processes, would add unnecessary costs and confusion to the customer enrollment process. In other words, providers should not be effectively punished for offering a product that removes customer risk (which is the intent of the fixed discount product), and DOER should avoid any Disclosure Form requirements which have a similar effect.

**Estimated Year One Credit Value and Savings:** Due to the number of variables involved in this calculation (e.g. utility rate changes, weather and soiling, system performance), Nexamp generally hesitates to prospectively represent a credit value and annual savings estimate for its customers. Nexamp suggests that forcing providers to do so has the potential to create concerns around consumer protection and deceptive marketing considerations. In other words, by virtue of requiring this information of providers, DOER may inadvertently be increasing the likelihood that customers will have complaints about the program generally. While providers can certainly provide estimates of annual and lifetime savings for subscribers, it seems counterproductive for DOER to force providers to make speculative assumptions about utility rates. Further, by doing so, DOER may also create incentives for providers to be more aggressive in their utility rate expectation assumptions (in order to appear more attractive to customers), again increasingly the likelihood of irresponsible practices it hopes to deter.

**Ownership of Incentives:** Nexamp submits that this entire section should be removed from the Disclosure Form. Instead, DOER should simply state that subscribing to a community solar project does not necessarily entitle customers to any SMART Incentive Payments, RECs, or any underlying tax-related attributes of the project. Generally speaking, Nexamp does not believe it is a responsible practice for a provider to offer tax-related information to a customer, except to state that their participation does not convey any ownership rights in the asset, including with regard to the investment tax credit or other state or local tax credits.

**Signature:** Nexamp recommends that DOER consider whether a direct customer signature is required on the Disclosure Form, especially given that customers will almost certainly be executing a separate customer agreement, directly with the provider (typically with more robust terms as required for the purposes of financing). Alternatively, in order to reduce costs and streamline the sales process, Nexamp recommends that DOER allow the Disclosure Form to be appended to any customer contract in order to satisfy the SMART program requirements.

In conclusion, Nexamp is supportive of the DOER's goals to encourage customer transparency and awareness. We are absolutely committed to building and maintaining a healthy, robust community solar marketplace in Massachusetts, and are grateful for the opportunity to opine on the best methods towards achieving that objective.

[Signature Page Follows]

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Murphy', with a stylized, cursive script.

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