

**Commonwealth of Massachusetts
Executive Office of Energy and Environmental Affairs
DEPARTMENT OF ENERGY RESOURCES**

**SOLAR MASSACHUSETTS RENEWABLE TARGET PROGRAM
(225 CMR 20.00)**

GUIDELINE

Guideline Regarding Low Income Generation Units

Effective Date: TBD

This document provides guidance regarding the manner in which Solar Massachusetts Renewable Target (SMART) Generation Units and/or the real property to which they provide 100% of the electricity or net metering credits they generate may qualify as a one of the types of low income Solar Tariff Generation Units identified under the Department of Energy Resource’s (Department) SMART Program.

BACKGROUND

On April 11, 2016 Governor Baker signed Chapter 75 of the Acts of 2016 into law. The Act directs the Department to create a long-term sustainable solar incentive program to promote cost-effective solar in the Commonwealth. The Act further directed the Department to “...differentiate incentive levels to support diverse installation types and sizes that provide unique benefits, including, but not limited to, community-shared solar facilities, low-income solar facilities and municipal or other governmental entity-owned solar facilities.” In developing the SMART Program, the Department established three types of low income Generation Units to ensure that low income residents receive the same level of access to the program as other types of residents.

WHAT TYPES OF LOW INCOME FACILITIES ARE ELIGIBLE UNDER THE SMART PROGRAM?

Under the SMART program, Generation Units are eligible to qualify as one of three types of low income Solar Tariff Generation Units, which are defined under 225 CMR 20.02 as follows:

Low Income Community Shared Solar Tariff Generation Unit. A Community Shared Solar Tariff Generation Unit with at least 50% of its energy output allocated to Low Income Customers in the form of electricity or net metering credits.

Low Income Solar Tariff Generation Unit. A Solar Tariff Generation Unit with an AC rated capacity of less than or equal to 25 kW that serves Low Income Customers.

Low Income Property Solar Tariff Generation Unit. A Solar Tariff Generation Unit with a rated capacity greater than 25 kW that provides all of its generation output in the form of electricity or net metering credits to low or moderate income housing, as defined under M.G.L. c. 40T.

Additionally, 225 CMR 20.02 defines Low Income Customer as follows:

Low Income Customer. An End-use Customer that qualifies as a low income customer under the applicable rate class with its local Distribution Company.

HOW DO I DEMONSTRATE THAT MY PROJECT QUALIFIES AS SERVING LOW OR MODERATE INCOME HOUSING?

Low Income Community Shared Solar Tariff Generation Unit Eligibility

To qualify as a Low Income Community Shared Solar Tariff Generation Unit, a Generation Unit Owner or their Authorized Agent must provide evidence that the Generation Unit meets the definition in 225 CMR 20.02 through one of the following:

1. A copy of the Generation Unit's Schedule Z form that demonstrates at least 50% of the Generation Unit's output is allocated to Low Income Customers; or
2. Other evidence satisfactory to the Department that demonstrates at least 50% of the Generation Unit's output is allocated to Low Income Customers.

Low Income Solar Tariff Generation Unit

To qualify as a Low Income Solar Tariff Generation Unit, a Generation Unit Owner or their Authorized Agent must provide evidence satisfactory to the Department that demonstrates 100% of the Generation Unit's output is provided to a Low Income Customer. This could be demonstrated by providing the Low Income Customer's current electric bill, which indicates that the customer qualifies as a low income customer under the applicable rate class with its local Distribution Company.

Low Income Property Solar Tariff Generation Unit

If a Generation Unit is seeking qualification as a Low Income Property Solar Tariff Generation Unit, the Owner or their Authorized Agent must provide documentation that demonstrates both the property and the offtake agreement meet the definition in 225 CMR 20.02. This definition has two major components: (1) a requirement that all of the generation output from the Generation Unit be delivered to or serving low or moderate income housing, and (2) a requirement that the low or moderate income housing meet the definition in the referenced statutory provision. Pursuant to statute, low or moderate income housing is defined as: "...any housing subsidized by the federal or state government under any program to assist the construction of low or moderate income housing as defined in the applicable federal or state statute, whether built or operated by any public agency or any nonprofit or limited dividend organization." See, M.G.L. c. 40B, § 20. In order to implement the statutory provisions found in M.G.L. c. 40B, §§ 20 through 23, the Massachusetts Department of Housing and Community Development (DHCD) has promulgated regulations at 760 CMR 56.00, *et seq.*

By regulation, DHCD further refines the definition of low or moderate income housing as "...any units of housing for which a Subsidizing Agency provides a Subsidy under any program to assist the construction or substantial rehabilitation of low or moderate income housing, as defined in the applicable federal or state statute or regulation, whether built or operated by any public agency or nonprofit or Limited Dividend Organization. If the applicable statute or regulation of the Subsidizing Agency does not define low or moderate income housing, then it shall be defined as units of housing whose occupancy is restricted to an Income Eligible Household." See, 760 CMR 56.02. Parsing this regulatory definition further, the terms Subsidizing Agency, Subsidy, Limited Dividend Organization, and Income

Eligible Household all likewise have their own defined meanings. Applicants seeking to qualify as a Low Income Property Solar Tariff Generation Unit pursuant to the SMART Program Regulation should review both the statutory and regulatory definitions before proceeding.

The SMART regulation provides that a determination as to whether a project qualifies as serving low or moderate income housing is made by the Department. The final determination as to whether the regulatory definition is satisfied is made in the Statement of Qualification Application (SQA) process pursuant to 225 CMR 20.06, in which the appropriate adder is also assigned. In order to obtain a Statement of Qualification for a Low Income Property Solar Tariff Generation Unit, an applicant must provide the following supplementary information with their SQA:

1. Proof of Low or Moderate Income Housing

Applicants must demonstrate that the recipient(s) for the Generation Unit's output meets the eligibility criteria set forth in the SMART Regulation. This requirement is slightly different for public housing authorities, as opposed to private entities.

Public Housing Authorities

Any public housing authority in Massachusetts meets the eligibility criteria to qualify as low or moderate income housing. If an applicant can document that 100% of their generation output is being delivered to a public housing authority, the Generation Unit will be deemed eligible as a low or moderate income Generation Unit. Lists of public housing authorities can be found on the following two websites:

Department of Housing and Community Development (DHCD)

<http://www.mass.gov/hed/economic/eohed/dhcd/contacts/local-housing-authority-listing.html>

US Department of Housing and Urban Development (HUD)

<http://www.hud.gov/offices/pih/pha/contacts/states/ma.cfm>

Private Entity

When considering the eligibility of a Generation Unit serving privately-owned low or moderate income housing (profit and non-profit), there are additional criteria that must be met in order for the property being served by the Generation Unit to be deemed eligible. In particular, the applicant must demonstrate:

- a. that at least 25% of the housing available at the properties to be served by the Generation Unit is required to be rented to households that are at or below 80% of the Area Median Income (AMI); or
- b. that at least 20% of the housing available at the properties to be served by the Generation Unit is required to be rented to households that are at or below 50% of the AMI.

The applicant must also demonstrate that these criteria will remain satisfied for a term that is at least coincident with the 20 year SMART term. If the term that the criteria must remain

in effect is less than the 20 year term, the applicant will need to demonstrate a commitment to renewing or extending the criteria at the time of application. Failure to renew or extend may result in the loss of a Generation Unit's Statement of Qualification under the SMART Program.

This demonstration can be made by providing one or more of the following documents and highlighting the relevant provisions that document the criteria listed above are being satisfied:

- A. Regulatory Agreement (memorializes affordability restrictions between owner and state or federal agency);
- B. Deed Restriction;
- C. Loan Agreement;
- D. Affordable Housing Restriction (lists the number of restricted units, income to which they are restricted to, and term of agreement);
- E. Housing Assistance Payments (HAP) Contract (documents section 8 provisions or state vouchers);
- F. Rent Roll/Income Report (shows actual annual income of existing residents);
- G. Utility Program Affordability Restriction;
- H. Tax Credit Regulatory Agreement and Declaration of Restrictive Covenants; and
- I. Other relevant documentation not listed.

Note: The Department may or may not be able to treat these documents as confidential. Any materials or data relative to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy or otherwise protected by law, should not be provided to the Department. Consistent with this instruction, applicants may redact those portions of the documents listed above and include a notation certifying as to why something has been redacted. The Department reserves the authority to confirm the accuracy of any redacted materials on a case-by-case basis.

2. Proof that 100% of Output is Delivered to Low or Moderate Income Housing

In order to obtain a Statement of Qualification, an applicant must demonstrate that the Generation Unit will deliver 100% of its output in the form of electricity or net metering credits to the low or moderate income housing or the residents of low or moderate income housing. This must be documented as follows:

- a. If output is being provided in the form of electricity, the applicant must demonstrate that 100% of the electricity generated by the Generation Unit will be delivered to an On-Site Load as defined in 225 CMR 20.02. To make this demonstration, the applicant must attest that the Generation Unit is interconnected behind-the-meter of the low or moderate income housing and provide a copy of the most recent utility bill for the facility that shows at least one year of historical load data. Estimates may be provided for new construction or in cases where less than one year of historical data exists.
- b. If output is being provided in the form of net metering credits, this must be documented through a completed Distribution Company Schedule Z form, or some other similar form of documentation.

If 100% of the output is being provided through a combination of electricity and net metering credits, the applicant must provide evidence of both a. and b. Net metering credits can be provided to any meter of a property designated as low or moderate income housing, including those serving common property, low income tenants, and other tenants.

3. Proof of a Minimum Agreement Term of 20 Years

Applicants must provide conclusive evidence, satisfactory to the Department, that the Generation Unit will deliver 100% of its output in the form of electricity or net metering credits to the low or moderate income housing for a period of time that is coincident with the length time that the Generation Unit would be eligible to receive the SMART incentive payment. If the Generation Unit is owned by the low or moderate income housing facility receiving the electricity or net metering credits, no proof of an agreement is necessary.

HOW DO I OBTAIN A DETERMINATION FROM THE DEPARTMENT THAT MY PROPERTY WILL QUALIFY AS LOW OR MODERATE INCOME HOUSING BEFORE SUBMITTING AN SQA?

As stated above, the final determination of a Generation Unit's eligibility as a low or moderate income Generation Unit is contained in a Statement of Qualification, which cannot be granted until an applicant has submitted a complete SQA to the Department and the Generation Unit has received its authorization to interconnect. However, the Department recognizes that in some circumstances, an entity planning to submit an SQA under 225 CMR 20.06 may wish to obtain guidance from the Department as to whether a potential Generation Unit is likely to qualify as serving low or moderate income housing, before submitting an SQA. To facilitate these requests, the Department will provide such guidance via a written "Low or Moderate Income Housing Generation Unit Pre-Determination Letter."

To obtain a Low or Moderate Income Housing Generation Unit Pre-Determination Letter, applicants must submit a written request to the Department that demonstrates the Generation Unit is proposed to serve low or moderate income housing, as described above. A Pre-Determination Letter Request and accompanying documentation must be submitted electronically to: DOER.SREC@state.ma.us.

The Department will respond to a Pre-Determination Request either with a request for additional information, or the issuance of a Low or Moderate Income Housing Generation Unit Pre-Determination Letter. Generally, the Department will provide the Pre-Determination Letter within thirty (30) days after receiving a complete request, or within thirty (30) days after receiving a complete response to any request by the Department for additional information, whichever is later. The Department's Low or Moderate Income Housing Generation Unit Pre-Determination Letter is not a final agency decision, is not binding on the Department, and does not give rise to any appeal right under M.G.L. c. 30A, or any other law. The Low or Moderate Income Housing Generation Unit Pre-Determination Letter is based on the information provided to the Department consistent with this Guideline, and the Department reserves the right to make a different determination in its Statement of Qualification should information provided to the Department in connection with a Pre-Determination Request prove to be materially inaccurate or incomplete. A sample Pre-Determination Letter can be found in Attachment A.

ATTACHMENT A: Sample Pre-Determination Letter

DATE

[First Name], [Last Name]
[Title]
[Organization]
[Address]
[City], [State] [Zip Code]

Dear Mr./Ms. [Last Name],

The purpose of this letter is to respond to [Organization's] request dated [date], concerning the potential qualification of [Site(s)] as Low Income Property Solar Tariff Generation Unit under 225 CMR 20.00. The Department of Energy Resources ("Department") has reviewed your request which explains [summarize factual details].

As prescribed in 225 CMR 20.00, Low Income Property Solar Tariff Generation Units are eligible to receive the corresponding Compensation Rate Adder under 225 CMR 20.05(3)(e)2. The Department has issued guidance to govern the pre-determination of low or moderate income housing in its *Guideline Regarding Low Income Generation Units* ("Guideline"). Acting in accordance with 225 CMR 20.00 and the applicable Guideline, the Department has reached the conclusion that the Site likely [does/does not] meet the criteria set forth in 225 CMR 20.00 to be considered as providing all of its generation output in the form of electricity or net metering credits to low or moderate income housing. This conclusion is based upon the following: [summarize reasons why site meets / does not meet criteria].

Please be advised that this pre-determination of low or moderate income eligibility letter is not a final agency decision, and is not binding on the Department, and does not give rise to any appeal right under M.G.L. c. 30A, or any other law. The Department will make a final determination on the eligibility of the Site's status as a low or moderate income housing Generation Unit at the time it issues a Statement of Qualification under 225 CMR 20.06. Such final determination may be different from the pre-determination contained in this letter if information provided by you is materially inaccurate or incomplete.

If you have any questions regarding this pre-determination of low or moderate income housing eligibility, please contact Kaitlin.Kelly@state.ma.us or 617-626-7343.

Sincerely,

Michael Judge
Director, Renewable and Alternative Energy Development