

Report to Shutesbury Planning Board regarding DOER call on Public Entity Status

Respectfully submitted by Michael DeChiara

March 24, 2021

Present via Zoom:

- DOER staff: Eric Steltzer, Dan Burstein, Ben Dobbs, Sarah McDaniel, Jonathan Held, Abby Barnicle
- Sen. Comerford's office: Elena Cohen
- Shutesbury officials: Rita Farrell, Becky Torres, Deacon Bonnar, Michael DeChiara

The call was from approximately 11:30 to 12:10 on Wed. March 24. The meeting was led for DOER by Eric Seltzer, the Director of the Renewal Energy Division. Participants included SMART and renewable energy program staff and legal counsel. The call was set up in response to emailed questions that I sent to DOER in early March seeking clarification of Public Entity status.

Below are some points from the discussion. Questions were asked of DOER by Rita, Becky and myself.

Intent Behind Public Entity Concept and Eligibility

Q: What DOER's intent in creating the Public Entity option?

DOER indicated that its intent in creating the Public Entity option was to assist municipalities develop solar facilities to benefit the municipality.

Q: Can DOER clarify its thinking about eligibility of projects for Public Entity status?

In terms of eligibility, DOER re-stated that in order to be granted Public Entity status under SMART, a project can either be on private land or public land. In either case, one of the following must be true about the project:

- *owned or operated by a Municipality or Other Governmental Entity; or*
- *the Owner has assigned 100% of its output to Municipalities or Other Governmental Entities*

DOER reported that they have not yet encountered a project on private land yet. They created this option in anticipation that a municipality wanted to develop its own solar but did not have adequate public land for the project. They suggested that in this kind of scenario, a town would have gone through a competitive bid process to select a developer. . So there is no precedent and therefore they could not be definitive about how they would deal with an arrangement such as what AMP is proposing. They also have not yet approved a Public Entity project on public land where 100% of the power is going to the town.

Documentation by Town for Public Entity Status

Q. What does DOER require in an agreement with the town regarding Public Entity status? Is an MOU sufficient?

According to DOER, what is required is an Operations and Maintenance Agreement. This would need to be specific in terms of what was agreed to for the town to operate a site. While they could not specifically say what needs to be included, they stated that an MOU does not provide sufficient detail to make it an Operations and Maintenance (O&M) Agreement. DOER agreed to work with Shutesbury, if requested, to review a proposed agreement. The takeaway is that a Memo of Understanding without specific contractual expectations (delete) is not sufficient for being granted Public Entity status.

Note: What is important and interesting to realize since an MOA would require specifics – what services will be provided and what compensation will be for those services, a facility has to be sited, and likely approved. This would suggest that an MOA cannot be developed and signed until after a project is successfully permitted.

Granted Exemptions and Benefits to Public Entity projects

Q. Can DOER confirm that there is an exemption to siting of projects that are granted Public Entity status? *Public Entity status is automatically granted Category 1 status under the land use guidelines. That means the project can be developed in land identified as Priority Habitat, Core Habitat or Critical Natural Landscape or on a parcel with at least 50 percent of its area designated as Priority Habitat, Core Habitat and/or Critical Natural Landscape. DOER confirmed this. They re-affirmed that SMART eligibility is separate from municipal zoning and permitting.*

Q. What are the benefits granted to projects that receive Public Entity status?

Normally there are three forms of documentation required by DOER when a project applies for and before it gets approved for SMART status: Proof of interconnection to utility, proof of required governmental permits, and proof of site control. If a project applies as a Public Entity, a project does not need proof of interconnection or proof of governmental permits before being granted SMART status.

In addition, there is a financial benefit to apply sooner than later for all solar projects applying for SMART incentives. The incentives are allocated by Capacity Blocks and Tranches and they are made available over time, in decreasing amounts. So the first projects to get approved get the best rates and the most volume of generated power to receive incentives; later applicants get lower rates and might not get all their proposed power approved. A Public Entity project gets automatic approval so they get to the front of the line and get the best incentive rates available.

Permit Related Information

Q. Does granting Public Entity status prior to local government permitting have an impact?

DOER made clear that they do not get involved in local permitting nor do they. That said, they did affirm that one of the exemptions granted to Public Entity projects is that they receive preliminary SMART approval prior to and without needing to have local permitting in place. This means that a project could get sited in environmentally discouraged areas (not Category 1) and still receive SMART incentives. However, the project would still be subject to local permitting after SMART approval is granted since that only provides for revenue, it does not replace special permitting by town.

Options for Revenue

Q. Can municipalities get shared revenue from a SMART solar project or the full adder a project receives by being a Public Entity?

DOER does not concern itself with revenue agreements between developers and municipalities. Thus far they have not seen any agreements where there is any revenue sharing. They have also not seen any situations where a municipality would be paid to operate a solar facility; Amp's suggestion would be the first.