COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF ENVIRONMENTAL PROTECTION

310 CMR 7.75: CLEAN ENERGY STANDARD - REVIEW OF OPTIONS FOR EXPANDING THE CES	: : : :	MARCH 29, 2019

COMMENTS OF
RETAIL ENERGY SUPPLY ASSOCIATION
RE 2019 STAKEHOLDER DISCUSSION DOCUMENT

The Retail Energy Supply Association ("RESA")[1] hereby submits its comments in response to the Department of Environmental Protection's ("Department") Stakeholder Discussion Document Expanding the Clean Energy Standard February 2019 ("Discussion Document").

INTRODUCTION

RESA is a non-profit organization and trade association that represents the interests of its members in regulatory proceedings in the Mid-Atlantic, Great Lakes, New York, and New England regions. RESA members are active participants in the retail competitive markets for electricity, including the Massachusetts retail electric market. Several RESA member companies are licensed by the Department of Public Utilities ("DPU") to serve customers in Massachusetts and are presently providing electricity service to customers in the Commonwealth. Accordingly, RESA and its members have an interest in ensuring that the expansion of the Clean Energy

[1] The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

Standard ("CES") does not have an adverse effect on its members, their customers, or the continued success of the competitive retail electric market in Massachusetts.

BACKGROUND

In August 2017, the Department adopted the CES, which required that the electric distribution companies ("EDCs") and competitive suppliers (collectively, "Retail Sellers") procure a minimum percentage of electricity sales from clean energy resources beginning in 2018.[2] On February 20, 2019, the Department posted the Discussion Document describing options for expanding the CES to achieve additional emissions reductions in support of the Global Warming Solutions Act ("GWSA").[3]

In the Discussion Document, the Department sought stakeholder input on increasing the CES, applying the CES to municipally-owned utilities ("Municipal Utilities"), and including existing clean generation resources.[4] RESA now hereby submits its comments in response to the Discussion Document.

COMMENTS

In evaluating the options for expanding the CES, RESA urges the Department to ensure that it protects existing customer expectations, applies the CES to the Municipal Utilities, and structures the parameters of any CES-E in a way that provides as much regulatory certainty as possible.

[2] 310 C.M.R. 7.75(4).

[3] Discussion Document, at 1.

[4] *Id*.

I. ANY CES OBLIGATION INCREASE WILL INCREASE COSTS TO RATEPAYERS

In the Discussion Document, the Department requested comment on increasing the CES above the current requirement of 20% in 2020[5] because doing so, "for example, to 21% or 22%, could provide additional reductions to help ensure compliance with GWSA emission limits."[6] In support of this increase, the Discussion Document noted that "sufficient supply exists in the regional certificate market to support a small increase in the standard in 2020 and 2021 without triggering the use of ACPs [alternative compliance payments] for compliance."[7]

Although increasing the CES may not trigger the use of ACPs, it will nevertheless impose additional, unexpected costs on Retail Sellers, which will ultimately be borne by ratepayers. Even if every Retail Seller is able to procure sufficient CES certificates to meet an increased standard, these entities will incur costs to procure these additional certificates. Further, under the basic principles of supply and demand, any increase in the CES requirement will increase the demand for, and price of, CES certificates; thereby, further increasing the cost. Ultimately, consumers will bear the burden of these increased costs through increased Basic Service rates or increased competitive supply prices.

Increasing the CES above the current regulatory requirement will also exacerbate inequities in the ratemaking treatment of CES compliance costs. Currently, the rate-regulated EDCs recover certain costs associated with Basic Service electric supply, including certain CES compliance costs, through rates applicable to ***all customers***, even customers who elect to receive

[5] Discussion Document, at 1.
[6] *Id.*
[7] *Id*.

energy supply from a competitive supplier.[8] As a consequence, competitive supply customers are compelled to bear some responsibility for CES compliance costs for energy that they did not consume. This ratemaking treatment is grossly inequitable because it imposes responsibility on competitive supply customers for costs that they did not cause; thereby, subsidizing Basic Service customers. Increasing the CES compliance obligation will produce a corresponding increase in the cost responsibility of competitive supply customers for costs that they did not cause and exacerbate the harm of this anticompetitive feature of Basic Service ratemaking.

II. THE DEPARTMENT SHOULD PROTECT EXISTING RATEPAYER EXPECTATIONS

In addition to an increase to the existing CES obligations for 2020 and 2021,[9] the Discussion Document also contemplates a potential "CES-E" standard for existing clean energy generators.[10] Both an increased CES and a newly-created CES-E obligation have the potential to frustrate consumer expectations because they could affect existing contracts that were priced based on the current CES requirements and may have terms of service that extend over multiple years.

While competitive suppliers may have contractual and legal means to address change of law circumstances, these mechanisms will have a direct and immediate financial effect on customers that have contracted for a fixed price and will be subject to new and unanticipated charges that are not within their budgets. These unanticipated charges could place customers in

[8] *See* D.T.E. 99-60-C (Oct. 6, 2000), at 13. The Basic Service power supply costs recovered from all customers consist of Basic Service reconciliation costs, which include CES compliance reconciliation costs. *See* D.T.E. 99-60-C (Oct. 6, 2000), at 13; *see also, e.g.*, M.D.P.U. No. 1352, Massachusetts Electric Company and Nantucket Electric Company Basic Service Adjustment Provision (Effective Apr. 1, 2018), at Sheet 1 ("The over- or under-recovery of power supply costs shall be allocated to the Company's rate classes . . . ."), Sheet 3 (identifying as a cost of providing Basic Service "the cost of acquiring Clean Energy Credits or remitting Alternative Compliance Payments to comply with the Clean Energy Standard pursuant to Mass. Gen. Laws c. 21N, the Global Warming Solutions Act, and 310 C.M.R. 7.75").

[9] Discussion Document, at 1.

[10] *Id.* at 2-4.

untenable positions because they may be required to pay these new costs per the terms of their contractual agreements. Such an unexpected cost impact would be particularly difficult for local and state governments, as well as institutional customers, such as hospitals, colleges, and universities, that generally have limited budgetary flexibility. Moreover, such unexpected changes would undermine the consumers' underlying confidence that the competitive electricity market can provide and deliver the type of pricing products they desire and have contracted to meet their energy needs. Accordingly, in order to avoid disrupting these existing agreements, just as the Department recognized an exemption from the CES for existing contracts at the time it promulgated the original regulations,[11] it should recognize a comparable exemption from any increased CES requirements or new CES-E compliance obligation.

III. MUNICIPAL UTILITIES SHOULD BE SUBJECT TO THE CES

In the Discussion Document, the Department requested comment on options for the potential application of the CES to Municipal Utilities.[12] In those cases in which Municipal Utilities have been exempted from certain requirements, the legislature has done so explicitly.[13] In this case, the GWSA specifically imposes upon "municipal electric departments and municipal light boards" the requirements applicable to Retail Sellers.[14] Accordingly, pursuant to the plain language of the GWSA, the CES should be applied to Municipal Utilities.

Moreover, Municipal Utilities contribute to greenhouse gas ("GHG") emissions and should concomitantly be required to contribute to their reductions. Similarly, municipalities and Municipal Utilities customers, like other consumers and residents of the Commonwealth, benefit

[11] *See* 310 C.M.R. 7.75(5)(d).

[12] *See* Discussion Document, at 2.

[13] *See, e.g.*, M.G.L. c. 25A, § 11F(i) ("A municipal lighting plant shall be exempt from the obligations under this section so long as and insofar as it is exempt from the requirements to allow competitive choice of generation supply under section 47A of chapter 164.").

[14] M.G.L. c. 21N, § 2(a)(5) ("[T]his requirement shall apply to all retail sellers of electricity, including electric utilities, municipal electric departments and municipal light boards . . . .").

when GHG emissions are reduced through the CES and the Department's efforts. Thus, the Municipal Utilities' customers should not be allowed to reap the benefits of GHG emissions reductions paid-for by other Massachusetts electric customers without contributing to the costs securing those GHG emissions reductions. Accordingly, Municipal Utilities should be subject to the same CES obligations as Retail Sellers.

Imposing the CES on Municipal Utilities will ensure that the obligation is instituted in a fair, balanced and competitively neutral fashion. Because Municipal Utilities are exempt from numerous regulatory requirements, competitive suppliers are already faced with questions from customers about why they can purchase power for a significantly lower cost from Municipal Utilities. Permitting Municipal Utilities to avoid or limit obligations under the GWSA will only further exacerbate this issue, particularly when the Municipal Utilities' customers receive the benefits of reduced GHG emissions that the CES produces and for which all other ratepayers have paid. Thus, including Municipal Utilities in the CES will allow CES costs to be shared equitably by all the customers benefiting from it.

To reduce the immediate impact on Municipal Utilities, the Department could adopt an appropriate phase-in to allow the Municipal Utilities reasonable time to comply. For instance, the phase-in schedule originally proposed by the Department would gradually implement the CES for Municipal Utilities so that, by 2050, all Retail Sellers, including Municipal Utilities, would be subject to the same standard.[15] By adopting this type of approach, the Department could ensure the CES is implemented in a more competitively neutral manner while still affording Municipal Utilities a more gradual phase-in of the obligations; thereby, avoiding potential rate shock to the ratepayers of the Municipal Utilities.

[15] *See* Discussion Document, at 2.

The cost impact to customers of Municipal Utilities could be further reduced if competitive suppliers were authorized to provide electric supply to Municipal Utility customers. For instance, competitive suppliers' knowledge of, and experience with, procuring renewable energy certificates ("RECs") and clean energy certificates, as well as the volumes of such certificates that competitive suppliers procure to satisfy obligations over a large portfolio, could enable competitive suppliers to procure these certificates at a lower cost than the Municipal Utilities; thereby, reducing the costs of compliance that would be imposed on their ratepayers.

IV. IF IT ADOPTS A CES-E, THE DEPARTMENT SHOULD PROVIDE AS MUCH REGULATORY CERTAINTY AS POSSIBLE

RESA appreciates the Department's consideration of allowing existing resources that will help the Commonwealth to reduce GHG emissions to participate in the CES. However, if the Department establishes a CES-E structure, it should ensure that the compliance requirements are straightforward, easily calculable, and identified for a multi-year period to allow businesses to manage their affairs more effectively and reduce risk premiums; thus, mitigating costs borne by ratepayers.

A. CES-E Compliance Obligations Should Be Fixed And Predictable And Based On A Percentage Of Sales

The Discussion Document raises the prospect of establishing a mechanism to adjust the CES-E compliance obligation percentage to maintain the amount of energy required if electricity sales change.[16] As an alternative, the Discussion Document contemplates that the CES-E compliance obligation be expressed in Megawatt-hours ("MWh").[17] If this MWh approach is

[16] Discussion Document, at 2-3.

[17] *Id.* at 3 n.4.

adopted, the Discussion Document proposes that a formula be used to apportion the MWh standard among Retail Sellers based on electricity sales.[18]

A formula or other methodology that fails to provide an easy and predictable method for determining compliance creates uncertainty that forces suppliers to estimate their compliance obligations and to include a significant premium in what they charge consumers to protect against that risk; thereby, increasing prices to ratepayers. Furthermore, if the compliance obligation is ultimately less than the suppliers estimated, customers will have paid more for CES-E compliance than was actually necessary. Conversely, by providing quantity and cost certainty, the Department can eliminate risk premiums associated with such uncertainty - resulting in lower prices for consumers. Thus, RESA urges the Department to provide quantity and cost certainty regarding any CES-E compliance obligations. Otherwise, customer contracts are likely to include a substantial risk premium to protect suppliers from future quantity risk. RESA requests that the Department adopt one of the following two proposals to eliminate or, at least, mitigate the uncertainty associated with the annual compliance obligation.

First, rather than using a formula or other methodology with unknown and unpredictable variables to calculate the compliance obligation, just as it did with the CES obligation,[19] RESA proposes that the Department provide a schedule that allows suppliers to know ***with certainty*** at the time the CES-E is adopted what their compliance obligations will be for the life of the obligation. Such certainty will allow suppliers to make appropriate forward CES-E certificate contracting decisions and eliminate the need to include risk premiums in their customer contracts to cover quantity uncertainty.

[18] Discussion Document, at 3 n.4.

[19] 310 C.M.R. 7.75(4) (providing standard through "2050, and each year thereafter").

Alternatively, if the Department requires flexibility to respond to changing conditions or to balance supply and demand, RESA proposes that, at the time the CES-E is adopted, the Department publish a schedule that establishes the compliance obligation for at least the first three (3) years and then, each subsequent year, establish the compliance obligation for the compliance year three (3) years forward. The Department should then only consider changes inside of the pre-established three (3) year period to rectify extreme imbalances that could not otherwise be addressed through adjustments in the obligation in later years.

If the Department does not provide quantity certainty for several years, customers with multi-year fixed price arrangements[20] will still be faced with increased risk premiums to account for the quantity uncertainty in the later years of those agreements. Conversely, by establishing a three (3) year forward compliance obligation, the Department can eliminate this risk premium in the majority of customer contracts. Customers, particularly commercial and institutional customers, place a high value on price certainty for budgeting and planning purposes. Suppliers can best provide such certainty if future cost of service obligations can be predicted with reasonable accuracy. Establishing and maintaining a program that fixes the forward obligations for at least three (3) years forward accomplishes this objective. Further, taking such an approach would reduce the criticality of including exemptions for existing contracts for any future program modifications.

In addition, rather than adopting a CES-E compliance obligation based a specific MWh amount that will need to modified based on unknown and unpredictable factors, the Department should use a percentage-of-sales-based mechanism that allows suppliers to determine their compliance obligations with ease. Such an approach will also mitigate the need for substantial

[20] *See* Energy Switch Massachusetts website (available at: http://www.energyswitchma.gov) (displaying multiple fixed price offers that extend thirty-six (36) months into the future) (last visited Mar. 28, 2019).

risk premiums in customer contracts to cover quantity uncertainty. A percentage-of-sales approach would have the added benefit of ensuring that the CES-E obligation varies in concert with overall energy use, which can change because of economic factors as well as the success of energy efficiency and conservation programs.[21]

B. CES-E Eligible Resources Should Be Clearly Defined And Tradeable

The Discussion Document contemplates that certain resources would be CES-E eligible.[22] However, those resources are ambiguously defined and it is unclear how Retail Sellers would know that a resource satisfies one or more of those requirements. For instance, given the regional nature of the ISO New England electric system, it is not clear how a Retail Seller would know whether a resource is "located in a state or adjacent control area that has consistently been a significant exporter of clean energy to Massachusetts, on a net annual basis"[23] or "can track imports through Quebec into New England."[24] So that suppliers can ensure that they have satisfied the obligation without having to engage in any independent analysis that could result in a different interpretation than that of the Department, the Department should establish clear parameters as to what will qualify as a CES-E resource. Accordingly, as it did with when it adopted the CES initially, RESA encourages the Department to establish a qualifications process that makes resource owners responsible for demonstrating that their facilities satisfy the requirements to qualify as CES-E resources.[25]

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[21] New Jersey's Governor recognized these benefits of a percentage-based approach compliance obligation when signing legislation changing a New Jersey solar REC compliance obligation from an approach based on specified amounts of energy to an approach based on a percentage of energy sales. *See* 2012 Legis. Bill Hist. NJ S.B. 1925 (Jul. 23, 2012) (available at: https://nj.gov/bpu/pdf/announcements/2012/20120723.pdf) (describing New Jersey Governor Christie's comments on bill S-1925) (last visited Mar. 29, 2019).

[22] Discussion Document, at 3.

[23] *Id.*

[24] *Id.*

[25] *See, e.g.*, 310 C.M.R. 7.75(8) (establishing a qualification process for Clean Energy Generation resources).

In addition, if the Department establishes a separate CES-E structure, it should not be effective until CES-E certificates can be defined, created, tracked, traded and retired in the New England Power Pool Generation Information System ("NEPOOL GIS"). In this way, the Department will mitigate any ambiguity or confusion about which existing resources are CES-E eligible and provide a familiar and established process[26] by which Retail Sellers can demonstrate compliance.

C. The CES-E Should Include An ACP Option

The Discussion Document considers including an ACP option in the CES-E.[27] RESA supports this proposal.

Without an ACP, in years where there are not sufficient CES certificates available to permit all Retail Sellers to meet their compliance obligations, there will be no other manner in which to achieve compliance; thereby, creating market uncertainty. Moreover, even in years where there may be sufficient CES-E certificates available, if they are controlled by a small number of generators, those resources would be able to exert significant market power over those certificates; thereby, resulting in higher costs that will ultimately be borne by ratepayers.

An ACP recognizes that there may not be sufficient CES-E certificates available in the market at a reasonable price and, as a practical matter, places a ceiling on the price of CES-E certificates. In doing so, it avoids a small number of generators being able to artificially increase the price of certificates and the resulting costs borne by ratepayers. It also avoids consumers having to bear the expense for clean energy at any price. For instance, if only two generators qualify as CES-E eligible, without an ACP, the cost of CES-E certificates will not be capped in

[26] *See* Clean Energy Standard (CES) Stakeholder Meetings: Options for Amending the CES, Stakeholder discussion slides – March 2019, at 5 (noting that CES attribute has been added to NEPOOL-GIS certificate tracking system for all CES-qualified generation).

[27] Discussion Document, at 3.

any way; thus, Retail Sellers could end up paying exorbitant prices to satisfy their compliance obligations with those costs ultimately being borne by ratepayers. By instituting an ACP, the Department can ensure that the CES-E does not cost ratepayers more than is necessary. An ACP will also provide the Department with an indication of how the market is functioning and appropriate signals to determine if there is a need to make adjustments to the administratively set CES-E standard to account for how the market is functioning. Thus, RESA requests that the Department include an ACP in the CES-E standard.

In addition, the Department should establish an ACP schedule that extends at least ten (10) years into the future as has been done with other programs.[28] Otherwise, suppliers will be faced with a constantly moving target that will not permit them to appropriately price their products. As a consequence, customers will always be subject to a significant risk premium as suppliers attempt to ensure they have adequately covered the costs of CES-E compliance.

D. The Department Should Consider Modifications To The CES-E Resource Qualification Requirements

The Discussion Document suggests potential parameters for resources to qualify as CES-E eligible.[29] If these parameters are adopted, in order to qualify as a CES-E resource, a generator would need to be "located in a state or adjacent control area that has consistently been a significant exporter of clean energy to Massachusetts, on a net annual basis (i.e., Quebec and NH)."[30] In addition, the Discussion Document notes that the "inclusion of existing non-emitting generators in Newfoundland or Labrador that can track imports through Quebec into New

[28] *See* Solar Carve-out (SREC) and Solar Carve-out II (SREC II) Current Status, Alternative Compliance Payment Rates and SREC I and II Auction Rates (available at: https://www.mass.gov/service-details/solar-carve-out-srec-and-solar-carve-out-ii-SREC II-current-status) (providing schedule for the Solar Carve-out II ACP Rates in effect for every Compliance Year through 2029) (last visited Mar. 28, 2019).

[29] Discussion Document, at 3.

[30] *Id.*

England could also be considered."[31] Given the regional nature of the electric system and markets, these parameters are too limiting and may be impossible to satisfy.

Competitive suppliers that operate in the Commonwealth and in other jurisdictions acquire, bank, and assign RECs and comparable certificates in order to ensure compliance with all applicable renewable portfolio standards ("RPS") and similar programs throughout their footprint. To do this in a way that minimizes the costs for which their customers are ultimately responsible, suppliers need to know, with certainty, whether particular generation qualifies to be associated with a REC or comparable certificate in each jurisdiction in which they operate. In New England, most states, including Massachusetts, recognize certificates from renewable or clean energy resources that are located in the ISO New England Inc. ("ISO-NE") control area or control areas that import into ISO-NE.[32]

Moreover, it will be extremely difficult, if not impossible, to identify the subset of resources that are "located in a state or adjacent control area that has consistently been a significant exporter of clean energy ***to Massachusetts***"[33] as opposed to all of New England. As the Department is aware, the regional electric transmission system is controlled by ISO-NE. Electricity is transmitted across the ISO-NE electric system, which receives electricity from power plants throughout the region and imports from other regions to meet the requirements of all customers in New England. Thus, it is not possible to track the exact location to which electricity from a particular power plant or area has been transmitted. As a consequence, determining whether power from a plant in Maine, for instance, has been exported to Massachusetts would be extremely difficult, if not impossible. Thus, just as it did when it

[31] Discussion Document, at 3.

[32] *See, e.g.*, 310 C.M.R. 7.75(7).

[33] Discussion Document, at 3 (emphasis added).

adopted to the CES, the Department should permit all resources located in the ISO-NE control area or an adjacent control area to qualify as CES-E eligible.[34]

The Discussion Document also suggests that a generator that has an announced retirement date would not be eligible to qualify as a CES-E resource.[35] However, the Department did not impose a similar requirement on the requirements for CES eligibility.[36] Furthermore, until retirement actually occurs, power generated by clean energy resources with announced retirement dates could still displace higher emitting generation sources and contribute to the Commonwealth's GHG reduction goals. Moreover, a generator may announce an expected retirement date then, for a variety of reasons, decide not to proceed as planned. Thus, the Department should not prohibit generators with announced retirement dates from qualifying as CES-E resources.

The Discussion Document also envisions special provisions for Seabrook.[37] While it may be appropriate to establish certain provisions in a CES-E standard to address unique aspects of Seabrook, any such special provisions should not unduly complicate the CES-E standard or effectively create another standard that is either carved out of or in addition to the CES-E standard.

V. THE DEPARTMENT SHOULD REVIEW THE CES AT APPROPRIATE TIMES

The Discussion Document also contemplates periodic reviews of the CES to consider, among other things, whether the two percent (2%) annual CES increase should end in 2045 to ensure that aggregate clean energy requirements in 2050 will not exceed 100% of electricity

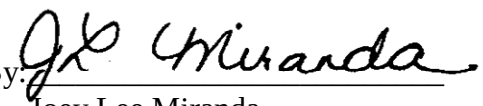
[34] *Cf.* 310 C.M.R. 7.75(7).
[35] Discussion Document, at 3.
[36] *See* 310 C.M.R. 7.75(7).
[37] Discussion Document, at 3.

sales.[38] The Commonwealth's aggregate clean energy requirements imposed on Retail Sellers should not exceed 100% of electricity sales. If they do, Massachusetts consumers effectively would subsidize the costs of clean energy consumed outside the Commonwealth. Accordingly, RESA supports appropriate review of the CES to ensure that the Commonwealth's aggregate clean energy requirements do not exceed 100% of electricity sales. In addition, the Department should also conduct periodic reviews to evaluate the impact that changes in supply, demand and technology have had on the various requirements of the CES, including the ability of Retail Sellers to satisfy their obligations.

CONCLUSION

For all of the foregoing reasons, RESA urges the Department to ensure that any expansion of the CES protects existing customer expectations, that Municipal Utilities are included in the CES, and that any CES-E structure provides as much regulatory certainty as possible.

Respectfully submitted,
RETAIL ENERGY SUPPLY ASSOCIATION

By: 

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[38] Discussion Document, at 3.