

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF ENERGY RESOURCES

MASSACHUSETTS CLEAN PEAK ENERGY PORTFOLIO STANDARD	: : : :	FEBRUARY 19, 2021
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COMMENTS OF
RETAIL ENERGY SUPPLY ASSOCIATION
RE EDC PROCUREMENTS STRAW PROPOSAL

The Retail Energy Supply Association (“RESA”)¹ hereby submits its comments in response to the Department of Energy Resources’ (“Department”) Clean Peak Portfolio Standard (“CPS”) electric distribution company (“EDC”) procurements straw proposal.² RESA appreciates the opportunity to comment on this important matter.

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 residential, commercial, and industrial customers in Massachusetts and are presently providing electricity supply to customers in the Commonwealth. Accordingly, RESA and its members have an interest in ensuring that the

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.

² Clean Peak Portfolio Standard (CPS) EDC Procurements Straw Proposal (Jan. 22, 2021) (“Straw Proposal”).

Straw Proposal does not have an adverse effect on RESA members, their customers, or the continued success of the retail electric market in Massachusetts.

BACKGROUND

On August 9, 2018, Governor Baker signed into law An Act to Advance Clean Energy (“Act”),³ which directed the Department to develop a program requiring retail electricity suppliers to meet a baseline minimum percentage of sales with qualified clean peak resources that dispatch or discharge electricity to the distribution system during seasonal peak periods, or alternatively, reduce load on the system.⁴ Pursuant to the Act, the Department was charged with developing regulations that establish, among other things, the methodology by which clean peak certificate (“CPECs” or “Certificates”) values would be established and an alternative compliance payment (“ACP”) mechanism for retail electricity suppliers.⁵

On August 7, 2020, the Department’s final regulation, 225 CMR 21.00: Clean Peak Energy Portfolio Standard (CPS), took effect.⁶ Among other things, this regulation directs each EDC to procure Certificates competitively, subject to certain parameters and requirements, and directs the Department to establish a schedule for the issuance of requests for proposals for Certificates.⁷ Pursuant to the regulations, Certificate procurements are to be designed to achieve an initial target of 30% of the total market obligation of retail electricity suppliers, including

³ Chapter 227 of the Acts of 2018.

⁴ *Id.* at § 13, *codified at* M.G.L. c. 25A, § 17(a).

⁵ *See id.* at § 13, *codified at* M.G.L. c. 25A, § 17(c).

⁶ *See* 225 CMR 21.00; *see also* Clean Peak Energy Standard History of Program Development, Summer 2020 – Final Regulation Filed with the Secretary of State, <https://www.mass.gov/info-details/clean-peak-energy-standard-history-of-program-development#summer-2020---final-regulation-filed-with-the-secretary-of-state> (last visited Feb. 16, 2021).

⁷ *See* 225 CMR 21.05(8).

EDCs and competitive suppliers (“Load Serving Entities”)⁸ in a given compliance year.⁹

However, the Department may adjust the procurement target in response to the market supply of Certificates in any compliance year and may determine that additional procurements are not required based on market supply conditions.¹⁰

On January 22, 2021, the Department issued the Straw Proposal, which sets out the objectives, proposed structure, and implementation schedule for EDC Certificate procurements.¹¹

On February 5, 2021, the Department issued clarifying Clean Peak Energy Certificate (CPEC) Procurement Straw Proposal: Questions and Answers.¹² RESA now hereby submits its comments on the Straw Proposal.

COMMENTS

The Straw Proposal has three objectives: (i) spurring new and incremental clean peak resource development; (ii) providing revenue certainty for clean peak resources to enable financing; and (iii) providing cost-effective Certificate supply.¹³ As the Department implements its innovative, first-in-the-nation¹⁴ CPS program and promotes the development of clean peak resources, it should ensure that Certificates are procured in a manner that balances these objectives in an equitable manner. In particular, the Department should ensure that the costs of

⁸ See 225 CMR 21.02 (s.v. “Retail Electricity Supplier”) (defining “Retail Electricity Supplier” as “A person or entity that sells electrical energy to End-use Customers in Massachusetts including, but not limited to, electric utility distribution companies supplying basic service or any successor service to End-use Customers”).

⁹ See 225 CMR 21.05(8)(a).

¹⁰ See 225 CMR 21.05(8)(b).

¹¹ See, generally, Straw Proposal.

¹² Clean Peak Energy Certificate (CPEC) Procurement Straw Proposal: Questions and Answers, <https://www.mass.gov/doc/cpec-procurement-q-a/download> (last visited Feb. 16, 2021) (“Answers”).

¹³ See Straw Proposal, at 2.

¹⁴ See Baker-Polito Administration Launches First-in-the-Nation Clean Peak Energy Standard, <https://www.mass.gov/news/baker-polito-administration-launches-first-in-the-nation-clean-peak-energy-standard> (Aug. 4, 2020) (last visited Feb. 17, 2021).

complying with the CPS do not disproportionately burden or fall upon any particular group of customers.

I. EDC PROCUREMENTS ARE UNNECESSARY TO SATISFY THE DEPARTMENT'S GOALS

Under the CPS, subject to certain parameters, Load Serving Entities are required to include an annually increasing minimum percentage of Certificates with their electric energy sales.¹⁵ Load Serving Entities that do not obtain and retire Certificates may fulfill this obligation by making an ACP at a specified rate.¹⁶

Under the Straw Proposal, assuming that the Certificate procurements are designed to achieve the initial target identified in the Department's regulation, the EDCs would procure, in advance, thirty percent (30%) of the total market obligation of all Load Serving Entities (i.e., EDCs and competitive suppliers) in a given compliance year.¹⁷ This would result in the procurement of a substantial number of Certificates and likely would result in the EDCs procuring *all* available Certificates for the foreseeable future.

For example, in 2020, the total load in the service territory of the Massachusetts EDCs was 45,650,005 MWh.¹⁸ In 2020, the CPS Minimum Standard was one and a half percent (1.5%).¹⁹ Thus, the total MWh compliance obligation was 684,750 Certificates.²⁰ This obligation does not account for retail load that was exempt from the 2020 requirement.²¹ However, even if

¹⁵ See 225 CMR 21.07.

¹⁶ See 225 CMR 21.08(3). The ACP rate is currently \$45.00 and will decline by \$1.54 per year, starting in 2025. See 225 CMR 21.08(3)(a)(2).

¹⁷ See 225 CMR 21.05(8)(a); see also Straw Proposal, at 4; Answers, at 3.

¹⁸ 2020 Monthly Electric Customer Migration Data, Annual (available at: <https://www.mass.gov/doc/2020-monthly-electric-customer-migration-data/download>) (last visited Feb. 18, 2021).

¹⁹ 225 CMR 21.07(1).

²⁰ All numbers have been rounded to the nearest whole number.

²¹ 225 CMR 21.07(1) (applying CPS Minimum Standard to retail supply contracts executed or extended on or after January 1, 2020).

all load served by competitive suppliers was exempt in 2020 (which it surely was not), the total compliance obligation would still be 177,217 Certificates.²² In order for the EDCs to procure 30% of that obligation, 53,165 MW of CPS resources would need to be available. However, currently, there are only seventeen (17) CPS qualified resources with a combined generating capacity of only 36.83 Megawatts (“MW”).²³ This is exponentially less than the amount necessary to satisfy all Load Serving Entities’ 2020 obligations or, even to satisfy the EDCs’ 2020 obligations. Most notably, it is also exponentially less than the 30% procurement target.

The ACP sets the ceiling price for Certificates. Given the extremely limited amount of Certificates currently available, CPS resource developers will have no incentive to offer their Certificates to any Load Serving Entities for much less than the ACP. Thus, even without EDC procurements, given the unmet demand for Certificates, the mere existence of the CPS will “spur[] new and incremental clean peak resource development” and, for the foreseeable future, “provid[e] revenue certainty for clean peak resources to enable financing.” Thus, EDC procurements currently are not necessary to achieve those goals.

Moreover, EDC procurements are no more likely to result in cost-effective Certificate supply than simply allowing the Certificates to be sold on the open market. Because the ACP sets the ceiling price for Certificates and the supply of Certificates is infinitesimal compared to the demand for those Certificates, CPS resource developers will offer their Certificates to Load Serving Entities at a price very close to the ACP. This will occur either in the open market or

²² 11,814,484*1.5%. See 2020 Monthly Electric Customer Migration Data, Annual (available at: <https://www.mass.gov/doc/2020-monthly-electric-customer-migration-data/download>) (last visited Feb. 18, 2021) (showing load served by EDCs as 11,814,484 MWh).

²³ See Clean Peak Standard Qualified Resources (Updated Jan. 8, 2021) (available at: <https://www.mass.gov/doc/cps-qualified-units-list/download>) (last visited Feb. 17, 2021).

through procurements conducted by the EDCs. Thus, EDC procurements are unlikely to lead to more cost-effective pricing than could be achieved in the market without such procurements.

II. EDC PROCUREMENTS WILL EXACERBATE ALREADY EXISTING INEQUITIES

Customers ultimately bear the costs of CPS compliance, whether through EDC Basic Service (a/k/a default service) rates²⁴ or competitive suppliers' retail supply prices. Because, under the Straw Proposal, the EDCs will procure all available Certificates, competitive suppliers will be forced to meet their CPS obligations through the ACP. Thus, competitive supply customers will be required to pay more than Basic Service customers to support the CPS. This will exacerbate existing inequitable cost allocation practices that harm competitive supply customers and impede the success of the competitive supply market in Massachusetts.

The DPU has long held that “[d]efault service is intended to be a basic service that provides customers with the appropriate incentives to turn to the competitive market for more sophisticated or advantageous service offerings.”²⁵ As a consequence, “[a]n underlying goal of the [DPU’s] default service pricing policies is to ensure that, to the extent possible, default service customers pay the full costs of providing that service.”²⁶ However, despite this, the EDCs still capture commodity-related (i.e., bypassable) costs in distribution (i.e., non-bypassable) rates. Although the DPU has undertaken efforts in the past to appropriately allocate costs between the

²⁴ See Docket No. DPU 20-98, *Petition of Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid for review and approval by the Department of Public Utilities of the Company's proposed Basic Service Adjustment Provision, M.D.P.U. No. 1456, to reflect revisions associated with the Massachusetts Clean Peak Energy Portfolio Standard regulations in 225 CMR 21.00*, Request for approval of the proposed Basic Service Adjustment Provision (Oct. 16, 2020) (seeking clarification that Basic Service rates include costs of procuring environmental attributes, including the CPS).

²⁵ D.T.E. 99-60-A (May 11, 2000), at 2.

²⁶ D.T.E. 99-60-C (Oct. 6, 2000), at 7.

bypassable and non-bypassable portion of rates,²⁷ certain Basic Service related costs are still captured in the EDCs' non-bypassable rates.²⁸ This creates inaccurate price signals and fails to provide customers with a full understanding of the value offered by the competitive market. Allowing Basic Service rates to reflect the costs of obtaining competitively procured, lower cost Certificates, while forcing competitive supply prices to reflect the cost of complying with the CPS through more expensive ACPs, would further exacerbate this issue.

III. THE DEPARTMENT SHOULD ESTABLISH AN EQUITABLE STRUCTURE

RESA supports developing an orderly and equitable approach to spurring CPS resource development. However, this is better accomplished by assuring CPS resource developers that a vibrant market for Certificates will be available when their facilities begin operating, rather than distorting the market for Certificates when extremely limited supplies are available.

The core problem is the current limited supply to meet the demand for Certificates. Consequently, and in accordance with 225 CMR 21.05(8)(b), the Department should lower the procurement target.²⁹ In particular, the Department should reduce the procurement target to a level that does not distort the Certificate market or artificially benefit some customers over

²⁷ See, generally, Docket D.T.E. 99-60, *Investigation by the Department of Telecommunications and Energy on its Own Motion into the Pricing and Procurement of Default Service Pursuant to G.L. c. 164, § 1B(d)*; Docket D.T.E. 02-40, *Investigation by the Department of Telecommunications and Energy on its Own Motion into the Provision of Default Service*; Docket DTE 03-88, *Investigation by the Department of Telecommunications and Energy on its Own Motion, Pursuant to G.L. c. 164 §§ 1A(a), 1B(d), 94; and 220 C.M.R. § 11.04, into the Costs that Should Be Included in Default Service Rates*.

²⁸ See, e.g., Docket D.P.U. 21-01, *Petition of Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid, for approval of their 2020 electric reconciliation filing effective March 1, 2021, pursuant to G.L. c. 164, § 1A(a) and 220 CMR 11.03(4)(e)*, Annual Retail Rate Filing (Jan. 15, 2021), Exhibit MR-1, at 4-5 (noting that, in reconciling Basic Service revenue and Basic Service expense, “any excess or deficiency is credited to or recovered from all the Company’s retail *delivery service customers*, with interest . . .”) (emphasis added).

²⁹ See 225 CMR 21.05(8)(b) (“The Department may adjust the procurement target in response to the Market Supply in any Compliance Year.”). Forgoing procurements altogether would also avoid distorting the market for Certificates. Indeed, as experience with other programs has shown, procurements are not necessary for encouraging development of particular types of generating facilities. Requirements that Load Serving Entities obtain and retire generation attributes produced by these facilities or make an appropriately-priced ACP have had significant success in spurring such development.

others, and then gradually step-up this procurement target as more resources qualify for the CPS and come on-line.³⁰

At this stage in the CPS market's development, to avoid Certificate supply distortions, the Department could cap the EDC procurements based on a percentage of the total number of *available* Certificates and on the EDCs' percentage of the Commonwealth's total MWh load obligation. For example, in 2020, because the EDCs' obligation was approximately twenty-six percent (26%) of the total load obligation of all Load Serving Entities,³¹ the EDCs should only be able to obtain twenty-six percent (26%) of the Certificates available to satisfy 2020 CPS compliance through procurements. This approach will ensure that EDCs do not obtain a disproportionate amount of the limited supply of Certificates and that the proportion of Certificates remaining in the market for purchase will equal the proportion of load served by competitive suppliers. Thus, competitive suppliers will have a fair opportunity to obtain those Certificates at market prices.

Alternatively, if the Department does not reduce the procurement targets, to ensure that customers of competitive suppliers are not disadvantaged by the fact that the EDCs will procure all of the available Certificates into the foreseeable future, the Department should lower the ACP rate to match the price at which the EDCs are able to obtain Certificates through the procurements. For example, if the EDCs are able to procure Certificates at \$40.00 per Certificate, the ACP should be reduced to \$40.00. This approach would ensure that customers of competitive

³⁰ Until there are significantly more CPS resources available, the Department should use the market supply adjustment of 225 CMR 21.05(8)(b) only to lower the procurement target. Because of the limited supply of Certificates, raising the procurement target would exacerbate the disparate and inequitable treatment of EDC and competitive supplier customers.

³¹ See 2020 Monthly Electric Customer Migration Data, Annual (available at: <https://www.mass.gov/doc/2020-monthly-electric-customer-migration-data/download>) (last visited Feb. 18, 2021) (showing load served by EDCs as 11,814,484 MWh and load served by all Load Serving Entities as 45,650,005 MWh).

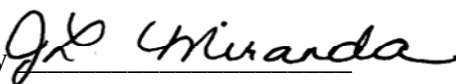
suppliers pay no more than Basic Service customers for CPS compliance. It also provides CPS resources a fair, competitively-set price for their Certificates.

While this approach might require an adjustment to the Department's regulations,³² it is consistent with law.³³ If the Department determines that modifying the ACP would require amendments to its regulations, RESA urges the Department to modify the procurement structure, as described above (i.e., based on available Certificates, rather than load obligation) until such a change can be achieved.

CONCLUSION

RESA appreciates the opportunity to offer comments on this important matter and implores the Department to establish a structure that does not disproportionately burden customers of competitive suppliers.

Respectfully submitted,
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³² See 225 CMR 21.08(3)(a).

³³ See M.G.L. c. 25A, § 17(c) (“The department shall promulgate regulations to implement this section, including, but not limited to . . . an alternative compliance mechanism for retail electricity suppliers . . .”).