

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF ENVIRONMENTAL PROTECTION

310 CMR 7.75: CLEAN ENERGY STANDARD	:	JANUARY 19, 2024
-------------------------------------	---	------------------

COMMENTS OF
RETAIL ENERGY SUPPLY ASSOCIATION
RE DECEMBER 2023 DISCUSSION DOCUMENT

The Retail Energy Supply Association (“RESA”)¹ hereby submits its comments in response to the Department of Environmental Protection’s (“MassDEP”) December 2023 Strengthening the Clean Energy Standard Discussion Document setting forth options for potential changes (“Proposed Changes”) to the Clean Energy Standard (“CES”).²

INTRODUCTION

RESA is a non-profit organization and trade association whose 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 to serve residential, commercial and industrial customers in Massachusetts and are presently providing electricity service to customers in the Commonwealth. As such, RESA has an interest in ensuring that the Proposed Changes do not have an adverse effect on RESA

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 See generally, MassDEP Discussion Document, Strengthening the Clean Energy Standard (Dec. 2023) (“Discussion Document”).

members, their customers or the continued success of the competitive retail electric market in Massachusetts.

BACKGROUND

In 2017, the MassDEP adopted the CES, which requires that the electric distribution companies (“EDCs”) and competitive suppliers (i.e., load serving entities (“LSEs”)) procure a minimum percentage of electricity sales from clean energy sources with a commercial operation date after December 31, 2010.³ In 2020, the MassDEP adopted changes to the CES that, *inter alia*, require the EDCs and competitive suppliers to procure a minimum percentage of electricity sales from facilities with a commercial operation date before 2011 (“CES-E”).⁴

In December 2023, the MassDEP issued the Discussion Document detailing the Proposed Changes and soliciting stakeholder feedback.⁵ RESA now hereby submits its comments in response to the Discussion Document.

COMMENTS

RESA understands the MassDEP’s desire to modify the CES to support clean energy development consistent with the Clean Energy and Climate Plan (“CECP”) for 2025 and 2030, the 2050 CECP, and sector based greenhouse gas emissions limits.⁶ However, many of the Proposed Changes will create regulatory uncertainty and add unnecessary operational complexity without achieving the desired result. The MassDEP can mitigate this by: (a) providing as much regulatory certainty as possible; (b) protecting existing customer expectations; and (c) limiting the potential complexity of any changes. Thus, for the reasons discussed more fully below,

³ 310 CMR 7.75(4)(a).

⁴ 310 CMR 7.75(4)(b).

⁵ *See generally*, Discussion Document.

⁶ *Id.* at 1.

RESA requests that the MassDEP consider revising the Proposed Changes before issuing proposed regulations.

I. MASSDEP SHOULD PROVIDE AS MUCH REGULATORY CERTAINTY AS POSSIBLE AND PROTECT EXISTING CUSTOMER EXPECTATIONS

In Massachusetts, LSEs are already required to satisfy nine (9) unique renewable and clean energy obligations.⁷ Complying with these various obligations is already complex. If adopted, the Proposed Changes would create two (2) additional obligations with which LSEs would need to comply further increasing the complexity of compliance.⁸

Ultimately, when considering any changes to the CES (whether it be those in the Discussion Documents or others), the MassDEP 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. The MassDEP should also ensure that it protects existing customer expectations.

A. Compliance Obligations And ACP Rates Should Be Established With Certainty In Advance

The Discussion Document includes proposals to:

- increase the ACP rate;⁹
- add a requirement that some fraction of each year's compliance obligation be met with CECs from generation with a commercial operation date that is within the prior three years (i.e., a "recent vintage" requirement) and impose a "relatively high per-MWH ACP" to incent new generation to be built;¹⁰

⁷ See 310 CMR 7.75; 225 CMR 14.00; 225 CMR 15.00; 225 CMR 16.00; 225 CMR 21.00.

⁸ See Discussion Document, at 2 (proposing to add a "recent vintage" obligation and a long-term planning requirement).

⁹ Discussion Document, at 1.

¹⁰ *Id.* at 2.

- add a requirement that a certain percentage of the compliance obligation be met through multi-year contracts with clean energy generators (i.e., a long-term planning requirement);¹¹
- increase the compliance obligation to account for behind-the-meter (“BTM”) electricity consumption;¹²
- redefine the numerical percentage standard;¹³
- count hydropower used to comply with Massachusetts Renewable Portfolio Standard (“RPS”) toward CES-E compliance and congruently increase the CES-E compliance obligation;¹⁴ and
- potentially transition to monthly or quarterly compliance periods.¹⁵

First and foremost, the Discussion Document does not indicate the date on which the MassDEP contemplates these changes would be effective.¹⁶ Moreover, the Discussion Document does not detail: (a) how the ACP rate will be established or how far in advance it will be known; (b) how the recent vintage compliance obligation will be established or how far in advance it will be known; (c) how the long-term planning compliance obligation will be established or how far in advance it will be known; (d) how LSEs will know how much the compliance obligations will increase to account for BTM consumption; or (e) how the increase in the CES-E compliance obligation to account for the inclusion of hydropower will be established or how far in advance it will be known.¹⁷ Further, although the Discussion Document indicates that some of the changes are intended “to ‘lock in’ a particular percentage standard instead of requiring analysis of

¹¹ *Id.*

¹² *Id.* at 2-3.

¹³ *Id.* at 3.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *See generally*, Discussion Document.

¹⁷ *See generally*, Discussion Document.

contributing components and load projections to estimate the overall effect of the CES,”¹⁸ those changes will actually create more uncertainty.¹⁹

As the Discussion Document acknowledges, increasing the ACP will increase the cost of CECs.²⁰ Because LSEs will need to purchase additional CECs to satisfy new compliance obligations and increases in existing compliance obligations, costs will increase even further. These increased costs will be passed onto consumers in higher Basic Service rates and competitive supply prices. In addition, if competitive suppliers do not know and cannot reasonably estimate their actual compliance obligations and costs with certainty, they will include significant risk premiums in their prices to account for the uncertainty. These risk premiums will further compound the costs that customers will be forced to pay as a result of the Proposed Changes. Furthermore, if the compliance obligation or cost is ultimately less than the suppliers estimated, customers will have paid more than was actually necessary.

Alternatively, competitive suppliers may include a provision in their customer contracts that either passes through the cost of compliance or allows the supplier to adjust the contract price once the compliance obligation and cost for a particular year are known. However, customers place a high value on price certainty for budgeting and planning purposes. Suppliers can best provide such certainty if the future cost of service can be predicted with reasonable accuracy.

To obviate the need for risk premiums or less attractive contract terms, RESA urges the MassDEP to provide a schedule that allows suppliers to know *with certainty* what their compliance obligations and the ACP rates will be for the life of the obligation. Such certainty

¹⁸ *Id.* at 2.

¹⁹ *See* Section II *infra*.

²⁰ Discussion Document, at 1.

will allow suppliers to make appropriate forward CEC contracting decisions and obviate the need to include risk premiums in their customer contracts to cover quantity and cost uncertainty. Alternatively, if the MassDEP requires flexibility to respond to changing conditions, RESA proposes that, the MassDEP publish a schedule that establishes each of the compliance obligations and ACP rates for a compliance year at least three (3) years forward. By establishing a three (3) year forward compliance obligation, the MassDEP can eliminate the risk premium in the majority of customer contracts. Further, taking such an approach would reduce the criticality of including exemptions for existing contracts.²¹

B. Existing Customer Expectations Should Be Protected

Equally important as regulatory certainty and the adoption of changes on a prospective basis is the need to protect existing customer expectations. When a new or modified obligation is imposed, it impacts existing contracts that were priced based on any prior obligation and may have a term of service that extends over multiple years. This is particularly severe when proposed changes are not applied prospectively. As noted above, if adopted, the Proposed Changes could materially increase the costs that customers are forced to bear to support clean energy development and affect existing contracts between competitive suppliers and customers.

As the MassDEP most certainly appreciates, the competitive electricity market in the Commonwealth continues to advance and competitive suppliers continue to enter into contractual obligations, often with multi-year terms of service,²² while potential CES amendments are being considered and will continue to do so until final regulations are promulgated. However, competitive suppliers do not take market positions or enter into

²¹ See Section I.B *infra*.

²² 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 Jan. 19, 2024).

agreement terms with customers based simply on the announcement that a regulatory change may occur or even based on the release of proposed regulatory revisions. Rather, since announced or even proposed regulatory revisions are subject to change based on the regulatory input process,²³ competitive suppliers take market positions and enter into agreements based only on actual regulatory requirements officially promulgated by the governing regulatory authority. In this way, customers are not exposed to undesirable contracting arrangements, unnecessary price increases and/or pricing volatility as a result of speculative regulatory changes that may never be adopted or that may be significantly modified through the regulatory process before such changes ultimately become effective. As consequence, only after the MassDEP officially promulgates any amendments to the CES will suppliers modify their market positions and/or the terms of their agreements with customers to account for any new or modified obligations or requirements. Accordingly, RESA requests that the MassDEP create a compliance exemption (subject to suppliers providing appropriate documentation) from the obligations of any amendments to the CES regulations until the expiration of any contracts existing as of the effective date of these amendments. In this way, the MassDEP can establish a paradigm that protects existing customer expectations.

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 untenable positions because they may be required to pay these new costs per the terms of their

²³ See, e.g., Response to Comments on Proposed Amendments to 310 CMR 310 CMR 7.75 *Clean Energy Standard*, <http://www.massdep.org/BAW/air/cesf-rtc.pdf> (Dec. 2017) (last visited Jan. 19, 2024) (outlining the Department's responses, including updates to proposed amendments to the CES, to stakeholder comments).

contractual agreements. Such an unexpected cost impact would be particularly difficult for customers with 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 MassDEP recognized an exemption for existing contracts at the time it promulgated the CES regulations,²⁴ it should recognize a comparable exemption from any amendments to those regulations.

II. ADJUSTING THE COMPLIANCE OBLIGATIONS AS PROPOSED WILL NOT SATISFY THE STATED OBJECTIVES OR PRINCIPAL GOAL OF THE PROPOSED CHANGES

The Discussion Document also includes several proposals intended “to ‘lock in’ a particular percentage standard instead of requiring analysis of contributing components and load projections to estimate the overall effect of the CES.”²⁵ However, the proposals intended to achieve these objectives will likely have the exact opposite effect and at substantially higher costs to ratepayers.

A. Adjusting The Compliance Obligation To Account For BTM Consumption Will Create More Uncertainty And Undermine The MassDEP's Goals

The Discussion Document includes a proposal to increase LSE compliance obligations to account for BTM electricity consumption.²⁶ However, adoption of this proposal would result in more estimations and uncertainty about the overall compliance obligation in contravention of the MassDEP's stated objective of establishing a set percentage “instead of requiring analysis of

²⁴ See 310 CMR 7.75(5)(d).

²⁵ Discussion Document, at 2.

²⁶ Discussion Document, at 2-3.

contributing components and load projections.”²⁷ This proposal would also create operational complexities for suppliers.

Customer consumption can vary widely and, therefore, cannot be known with certainty or even accurately estimated in advance. Further, the EDCs are the only entities with access to the information necessary to determine the actual amount of BTM consumption throughout their service territories – information that is not shared with suppliers. As a result, it is impossible for suppliers to determine the impact BTM consumption will have on their compliance obligations at the time that they enter into agreements with customers. In order to compensate for this uncertainty, suppliers will build risk premiums into their pricing that will only further exacerbate the cost impacts of the Proposed Changes on ratepayers.

Because of this uncertainty, suppliers are also less likely to enter into contracts to purchase a set number of CECs at some point in the future to avoid buying more certificates than they will need to meet their compliance obligations. Therefore, more purchases will be made in the spot market – likely at a higher price, which will further increase the cost to consumers of the Proposed Changes. The unwillingness of suppliers to enter into contracts to purchase a set number of CECs at some point in the future will increase uncertainty for clean energy generators about how many and at what price they may be able to sell CECs. As a consequence, generators may be less willing to build new generation in direct contravention of main goal of the Proposed Changes.²⁸

²⁷ *Id.* at 2.

²⁸ *See* Discussion Document, at 1 (indicating that the Proposed Changes are being considered “to support clean energy development”).

B. Redefining The Numerical Percentage Will Also Increase Uncertainty And Undercut The MassDEP’s Goals

The Discussion Document also includes a proposal to redefine the numerical percentage standard.²⁹ However, the manner in which this is proposed to be achieved appears to actually increase the uncertainty and complexity of the compliance obligations, which conflicts with the MassDEP’s stated objective of establishing a set percentage.³⁰

Currently, the CES and CES-E are additive.³¹ The CES is known for future years but the CES-E obligation is not.³² As a consequence, LSEs do not know their total obligation for a future year “until the CES-E percentage is finalized.”³³ To remedy this, the Discussion Document contemplates that the total obligation will be set in regulation.³⁴ However, as described, it appears that the individual CES and CES-E obligations would be determined “based on electricity sales” in a particular year.³⁵ Thus, both the CES and CES-E obligations would be unknown and vary from year-to-year – undermining the MassDEP’s objective of locking in a percentage standard.

Moreover, this proposal does not indicate when the CES and CES-E percentages would be made known. As a consequence, suppliers would be unable to make informed decisions about how many CECs and CEC-Es to buy to satisfy their obligations. To try to account for this uncertainty, suppliers will build risk premiums into their pricing that will only further compound the cost burden of the Proposed Changes on ratepayers. In addition, suppliers will also be less

²⁹ *Id.* at 3.

³⁰ *Id.* at 2.

³¹ *Id.*

³² Compare 310 CMR 7.75(4)(a) (establishing a set percentage for the CES through 2050) with 310 CMR 7.75 (establishing a formula for calculating the CES-E).

³³ Discussion Document, at 3.

³⁴ *Id.*

³⁵ *Id.*

likely to enter into contracts to purchase a set number of CECs and CEC-Es at some point in the future; thereby, increasing the uncertainty for generators selling CECs and CEC-Es about how many certificates they may be able to sell and at what price. This uncertainty could make generators less willing to build new clean energy resources in conflict with the principal goal of the Proposed Changes.³⁶

C. Increasing The CES-E Compliance Obligation To Account For Class II Hydro Would Substantively Change The Clean Energy Requirements

The Discussion Document includes a proposal to “count MA RPS Class II compliance toward CES-E compliance on a percentage basis.”³⁷ The stated purpose of this proposed change is “to simplify clean energy accounting by making the CES percentage standard more reflective of the total fraction of Massachusetts electricity consumption that is served by clean energy, not to substantively change the clean energy requirements.”³⁸ However, the Discussion Document also contemplates increasing the CES-E “to avoid reducing the combined impact of the MA RPS Class II and CES-E standards.”³⁹ Such an increase would substantively change the clean energy requirements contravening the stated purpose for allowing Class II Hydro to count toward CES-E compliance.

D. The Proposed Changes Will Not Incent Clean Energy Resources To Generate Electricity At Specific Times

The Discussion Document notes that “[c]urrently there is no requirement that clean electricity counted under the CES be generated when there is corresponding demand for electricity in Massachusetts.”⁴⁰ One option being considered to address this issue is prohibiting

³⁶ See Discussion Document, at 1 (indicating that the Proposed Changes are being considered “to support clean energy development”).

³⁷ *Id.* at 3.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Discussion Document, at 3.

“clean energy generated during periods of negative wholesale electricity prices from generating CECs.”⁴¹ However, because this option does not change the basis on which CECs are issued (i.e., minted), it will not change when generation occurs. As a consequence, it will not achieve the desired result.

In the New England Power Pool Generation Information System (“NEPOOL GIS”), certificates are minted quarterly based on generation during a particular *month*.⁴² Because of this, it would be impossible to avoid the creation of a CEC unless negative wholesale electricity prices were in place for the entire calendar month. Thus, it is not feasible to implement this option within NEPOOL GIS. Furthermore, intermittent clean energy generators that rely on nature to provide their “fuel” do not have the ability to control when they generate electricity.

Moreover, any attempt to account for periods of negative wholesale electricity prices outside of the NEPOOL GIS framework will create uncertainty for LSEs about which CECs will be accepted to demonstrate compliance. As a result, suppliers will build risk premiums into their pricing that will only further compound the cost impacts of the Proposed Changes on ratepayers. Because of this uncertainty, suppliers also will be less likely to enter into contracts to purchase a set number of CECs and CEC-Es at some point in the future in order to avoid buying certificates that they will be unable to use to demonstrate compliance with the CES regulations. As a consequence, more purchases will be made in the spot market – likely at a higher price that will further increase the costs associated with the Proposed Changes that ratepayers will be forced to bear.

⁴¹ *Id.*

⁴² See NEPOOL Generation Information System, “[Important NEPOOL GIS Dates](https://nepoolgis.com/),” available at: <https://nepoolgis.com/> (noting the quarterly issuance date for certificates based on each month’s generation) (last visited Jan. 19, 2024).

The unwillingness of suppliers to enter into contracts to purchase a set number of CECs and CEC-Es at some point in the future will increase uncertainty for clean energy generators about how many and at which price they may be able to sell CECs. As a consequence, generators may be less willing to build new generation; thereby, undermining the principal goal of the Proposed Changes.⁴³

E. The Proposal To Increase Compliance Frequency Will Not Achieve The Desired Result And Will Needlessly Add Operational Complexities

In order to induce clean energy resources to generate “when there is corresponding demand for electricity in Massachusetts,” the MassDEP is also alternatively considering increasing the frequency with which LSEs must demonstrate CES compliance to quarterly or monthly.⁴⁴

First and foremost, the best way to encourage generators to engage in a desired behavior is to do so directly. Moreover, imposing additional compliance obligations on LSEs will not incent clean energy resources to generate clean energy when there is corresponding demand. As noted above, CECs are minted quarterly based on monthly generation. Thus, a clean energy resource could generate all of its electricity in a given month during periods of low demand and *still* create CECs for that month. Thus, imposing a requirement that LSEs buy CECs from a specific month or quarter will not force or even incent clean energy resources to generate during periods of higher demand.

Moreover, even though it will not achieve the desired result, imposing a monthly or quarterly compliance obligation will add operational complexities to the purchase of CECs and compliance with the CES. As a preliminary matter, competitive suppliers have devoted

⁴³ See Discussion Document, at 1 (indicating that the Proposed Changes are expected to increase clean energy development).

⁴⁴ *Id.* at 3.

considerable effort to developing strategies for complying with their CES obligations based on systems for trading renewable and clean energy certificates that have been in place for decades. These strategies may include purchasing and retiring CECs during the current compliance year, relying on previously banked CECs, and making ACPs. Moreover, suppliers that purchase and retire CECs during the current compliance year may use various procurement strategies to do so, including making purchases of CECs in regular amounts and at regular intervals throughout the calendar year, purchasing CECs when prices fall to certain levels regardless of the time of year, and entering into long-term contracts to secure supplies of CECs at set prices years before the CECs are actually generated. Increasing the frequency with which LSEs must demonstrate compliance has the potential to upend these carefully developed strategies and to impose additional costs that would ultimately be borne by customers.

Because compliance obligations must be met annually, a common contracting practice is to enter into an arrangement by which a supplier buys CECs for an entire annual compliance year for guaranteed delivery by June 1 of the following year. In order for suppliers to demonstrate compliance either monthly or quarterly, there would need to be a fundamental change in this practice (i.e., CECs would need to be sold and delivered⁴⁵ on a monthly or quarterly basis). However, because such a change would only apply in Massachusetts, it is unclear if those selling certificates would be willing to agree to such a change. If not, suppliers would be forced to pay the ACP, which would substantially reduce demand for CECs and the prices that clean energy generators will receive for those CECs in contravention of the MassDEP's principal goal of incenting new clean energy development.

⁴⁵ Notably, the CECs could not be delivered until, at least, four to six months after the generation month. *See* NEPOOL Generation Information System, “[Important NEPOOL GIS Dates](https://nepoolgis.com/),” available at: <https://nepoolgis.com/> (noting the issuance date and trading period applicable to each generation month) (last visited Jan. 19, 2024).

Furthermore, the proposal raises significant questions about the means by which suppliers will be able to demonstrate compliance with the CES. For instance, the proposal does not identify how the monthly or quarterly compliance obligations would be calculated. What will suppliers use to determine their load in the month or quarter? Will it be the same source as that used to calculate the total load obligation at the end of the year? Will the MassDEP provide this information or will the suppliers be required to obtain it from another source? If the latter, what will that source be? If it becomes too complex for suppliers to determine their monthly and quarterly obligations, they may simply resort to paying the ACP. This will substantially reduce demand for CECs and the prices that clean energy generators will receive for those CECs, which will contravene the MassDEP's principal goal of spurring further clean energy development.⁴⁶

Moreover, the proposal does not define how the monthly and quarterly compliance obligations could be satisfied. For instance, will LSEs simply need to establish monthly or quarterly compliance with the overall CES obligation? Or will LSEs need to establish monthly or quarterly compliance with the obligation associated with each individual component (e.g., the CES-E and any of the new standards set forth in the Discussion Document) of the CES? Applying a monthly or quarterly compliance obligation to the particular components of the general obligation could exacerbate limitations on the supply of available certificates during particular quarters. For example, because solar facilities tend to generate less energy in the winter months than in the summer months because of seasonal variation in day-length, the number of solar certificates available in the winter months could be constrained. Seasonal fluctuations in generation is even larger in the case of hydroelectric, where, because of seasonal snow melt, output in the spring months far exceeds output in the summer and early fall. If LSEs

⁴⁶ See Discussion Document, at 1.

are required to settle solar and hydro certificates during those months or quarters, the limited supply could lead to significant increases in the prices of those certificates — once again, increasing the cost of compliance for all suppliers and, ultimately, the prices paid by all ratepayers (including those served by the EDCs) – even though the proposal will not achieve the desired result of incenting clean energy resources to generate “when there is corresponding demand for electricity in Massachusetts.”⁴⁷

III. THE PROPOSED INCREASES TO THE ACP RATE ARE NOT LIKELY TO PRODUCE THE DESIRED RESULTS

While RESA understands the MassDEP’s desire to try to incent certain actions by clean energy generators, the manner in which it proposes to do so is unlikely to lead to the desired outcome and will result in substantial cost increases that ultimately will be borne by all ratepayers in higher Basic Service rates and competitive supply prices. Thus, before adopting the Proposed Changes, RESA urges the MassDEP to evaluate whether there are alternative means that are more likely to achieve its objectives and that will not result in such a substantial burden on ratepayers.

A. Increasing The ACP Rate May Not Have The Desired Effect And Could Result In Substantial And Ongoing Cost Increases That Will Be Borne By Ratepayers

The first proposal in the Discussion Document is to increase the ACP rate because it could increase the market price of CECs in order to support the development of more clean energy resources.⁴⁸ However, the price that a clean energy generator can receive for CECs is only one factor that influences the decision to build additional generation. Thus, it is not

⁴⁷ Discussion Document, at 3.

⁴⁸ Discussion Document, at 1.

necessarily true that an increase in CEC prices will lead to more development of clean energy resources.

In addition, while the CEC prices may increase initially in response to an increase in the ACP, once there is sufficient supply to satisfy the demand for CECs, the prices will come back down. Once prices fall, if more clean energy resources are still needed to meet the State's goals, MassDEP may need to raise the ACP rate again; thereby, further increasing the costs that Massachusetts ratepayers will be forced to bear. Similarly, raising the ACP rate to try to ensure that more CECs are sold in Massachusetts than surrounding states⁴⁹ may also only have a temporary effect. This will also likely result in the other states, who are also trying to achieve their goals, increasing their ACP rates, which will require MassDEP to further increase its ACP rate, and so on. As a consequence, there could be cascades of increases all across New England; compounding the cost increases that ratepayers will be forced to absorb. Conversely, the proposal to dedicate CES ACP funds to supporting new CES-eligible projects⁵⁰ is much more likely to spur new clean energy development and will not result in a significant burden on consumers. Thus, RESA supports the adoption of that change.

The Discussion Document also includes a proposal to add a recent vintage and impose a “relatively high per-MWH ACP” to incent new generation to be built.⁵¹ As noted above, the price that a clean energy generator can receive for CECs is only one factor that influences the decision to build additional generation. Consequently, it is not necessarily true that an increase in the ACP rate will lead to more development of clean energy resources. Moreover, an even higher

⁴⁹ *Id.* (noting that “raising the ACP rate to a level consistent with (or higher than) other regional programs would better ensure that when the regional supply of clean energy increases due to Massachusetts’ clean energy contracts, the increase in regional supply is fully counted toward Massachusetts’ clean energy goals vs. those of other states that have similar programs with higher ACP rates.”).

⁵⁰ *Id.*

⁵¹ Discussion Document, at 2.

ACP rate will only further increase the costs that ratepayers will be required to assume. Thus, before issuing proposed regulations, RESA urges the MassDEP to consider alternative means by which to incent clean energy development that are more likely to create the desired outcome and may be less costly.

B. Long-Term Contracting Is Inconsistent With Other Stated Goals, Antithetical To A Competitive Market And Likely To Result In Sunk Costs

In order to provide more certainty for clean energy generators, the Discussion Document includes a proposal to add a long-term planning requirement.⁵² However, this contravenes the MassDEP’s stated desire to “avoid providing unnecessary support over the operational life of projects.”⁵³ Requiring that competitive suppliers enter into long-term agreements is also inconsistent with a competitive market structure in which suppliers are consistently trying to find ways to differentiate themselves and provide customers with cost-efficient and value-added products because it will require all LSEs to buy the same underlying product (i.e., CECs) at the same price.

In addition, Massachusetts does not have the administrative infrastructure or experience to administer such a program successfully. While it is possible for the Commonwealth to develop the administrative framework to include long-term contracting within the CEC obligations, if the effort is unsuccessful, the funds expended to create the framework may be unrecoverable – funds that could have been invested in other efforts with a higher likelihood of success (e.g., incentives for developers to build additional clean energy generation). Thus, RESA recommends that the MassDEP forgo adopting the long-term planning requirement.

⁵² *Id.*

⁵³ *Id.* (identifying one of the benefits of a potential recent vintage requirement).

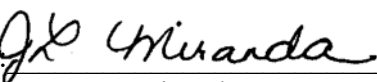
IV. MASSDEP SHOULD HOLD A TECHNICAL MEETING

As the foregoing demonstrates, many of the Proposed Changes will not achieve their desired result or will undermine other goals. While the filing of comments can point out these issues, it does not provide a meaningful opportunity for consideration of alternatives to achieve those goals. This can best be accomplished through an open dialogue process in which all interested stakeholders can provide input on a particular proposal and understand the implications of such proposals on other stakeholders. Such a process also provides an opportunity for the MassDEP to ask follow-up questions and more fully vet potential alternatives that could result in proposals that achieve the desired objectives at a lower cost and with less disruption. Thus, RESA recommends that the MassDEP conduct a technical meeting to discuss its proposals and the comments received before issuing proposed amendments.

CONCLUSION

For all of the foregoing reasons, RESA requests that the MassDEP consider revising the Proposed Changes before issuing proposed regulations to: (a) provide as much regulatory certainty as possible; (b) protect existing customer expectations; and (c) avoid unnecessary complexity.

Respectfully submitted,
RETAIL ENERGY SUPPLY ASSOCIATION

By: 

Joey Lee Miranda
Robinson & Cole LLP
280 Trumbull Street
Hartford, CT 06103
Phone: (860) 275-8227
Fax: (860) 275-8299
E-mail: jmiranda@rc.com