Ridgewood Renewable Power

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Via email doer.rps@state.ma.us

Robert Sydney, Esq.
General Counsel
Massachusetts Division of Energy Resources
100 Cambridge Street
Suite 1020
Boston, MA 02114

RE: **Comments on Proposed Revisions to the Regulations for the Massachusetts Renewable Energy Portfolio Standard**

Dear Mr. Sydney:

Ridgewood Renewable Power, LLC ("Ridgewood"), through affiliates, owns interests in and operates 20 separate generating facilities located in New England with a combined generating capacity of over 90 MW. These facilities represent a variety of generating technologies – low emission advanced biomass, hydroelectric, municipal solid waste and landfill gas. Four of these facilities, representing over 70 MW, have received Statements of Qualification from the Massachusetts Division of Energy Resources ("DOER") and are actively participating in the Massachusetts Renewable Portfolio Standard ("RPS") market and selling renewable energy certificates ("RECs"). Ridgewood has actively participated in the development of the Massachusetts RPS as well as in RPS programs in many other states. As a result of such ownership, operation and participation, Ridgewood has a significant interest in the RPS and appreciates this opportunity to provide comments, suggestions and recommended changes to and as requested by the DOER in its June 2, 2006 "Notice of Public Hearing and Proposed Regulations," in which the DOER invited comments regarding the proposed regulations ("Proposed Regulations").

Introduction

The DOER's continued modifications to the RPS program, whether actual or proposed, create an unsettled environment in which decisions to develop or finance a renewable project become even more difficult to make. The existing RPS regulations are working well and will continue to do so if left alone.

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However, since the RPS regulations were issued in April 2002, the DOER has (i) issued advisory rulings, without significant or meaningful public participation, which had the effect of expanding the scope and reach of the existing RPS regulations, (ii) issued biomass guidelines, (iii) issued a notice of inquiry, (iv) issued a subsequent policy statement that in part reversed the biomass guidelines issued less than 18 months earlier, (v) issued Statements of Qualification as part of non-public settlements of unreported litigation, and (vi) now issues Proposed Regulations, which include further "guidelines" that in part empower the DOER to make determinations as to what is eligible biomass based upon "thresholds," secondary criteria, and other guidelines that may change as the DOER may determine with whatever public participation the DOER elects to allow. The primary reason for any unpredictability regarding the biomass eligibility criteria in the existing RPS regulations was largely caused by the substitution of adaptable and, in some cases, accommodating determinations of eligibility for legally and properly adopted regulations. While Ridgewood understands that over time issues may arise that need to be addressed by the DOER (e.g., retrofitted biomass units, new biomass technologies), the manner in which those issues must be addressed is through rulemaking and not by discretionary pronouncements and determinations outside of the legal framework required for adoption of regulations.

COMMENTS

Proposed Use of Guidelines

In the Proposed Regulations, the DOER has decided to establish "the specific RPS eligibility criteria for biomass-fueled Generation Units by means of Guidelines **rather than in the RPS Regulations themselves."** (Emphasis Added). The reason apparently for the DOER's use and implementation of Guidelines to determine eligibility was to obviate the need for Advisory Rulings (which rulings are proposed to be deleted), the issuance of which became viewed by developers as necessary because of the "lack of specific guidance available from the DOER on what constituted low-emissions and advanced biomass conversion technologies." The Guidelines, therefore, are intended by the DOER "to provide sufficient clarity and predictability to biomass Unit developers and eliminate the need for case-by-case Advisory Rulings." The Guidelines, however, run for eighteen pages, are complicated and confusing, and describe, among other things, emission levels, monitoring requirements, enforcement, technology requirements, fuel efficiencies and many other requirements and criteria. Among other things, they create "thresholds", "secondary criteria" having nothing to do with the definition of "advanced biomass power conversion technologies", and enable the DOER to make revisions seemingly at will. Given that, and the history of DOER oversight in the biomass area, Ridgewood can not conceive of how these Guidelines will serve to provide clarity and predictability to the market or survive legal challenge. Moreover, the Guidelines address "eligibility criteria" and as such fundamentally affect the rights and procedures of the regulated industry. As a result, they must be adopted, or revised, as regulations in compliance with the Massachusetts Administrative procedures Act, Chapter 30A (the "APA"). As proposed, the Guidelines do not, nor will revisions, comply with the APA,

providing further uncertainty as to whether Statements of Qualification and RECs sold thereunder are valid.

The Guidelines must be adopted pursuant to the APA and failing that they do not have the binding force of Regulations.

By opting to handle biomass eligibility through the use of guidelines, as opposed to RPS regulations, the DOER admits that the Guidelines are not regulations. As a result, the Guidelines do not have the binding force of law and any actions of the DOER or market participants under the guise of regulatory authority issued under the Guidelines is illegal and naturally suspect.[1]

The Massachusetts Administrative Procedures Act, G.L. c. 30A, at section 5, provides that regulations includes

> [e]very rule, regulation, standard or other requirement of general application and future effect, including the amendment or repeal thereof, adopted by an agency to implement or interpret the law enforced or administered by it, but does not include (a) advisory rulings issued under section eight; or (b) regulations concerning only internal management or discipline of the adopting agency or any other agency, and not substantially affecting the rights of or procedures available to the public or that portion of the public affected by the agency's activities....

Thus, it is clear is that any action of an agency that affects the rights of or procedures available to the regulated public are clearly regulations and must be adopted as such. ***See, Massachusetts General Hospital v. Rate Setting Commission***, 371 Mass. 705 (1977). Because the Guidelines describe eligibility criteria by which a biomass facility, existing or proposed, qualifies under the RPS to produce and sell RECs, they clearly affect the rights of and procedures applicable to the regulated public (i.e., biomass owners. operators and developers) and must be adopted in strict conformance with the MAPA in order to be a valid exercise of regulatory authority. As the Court in ***Massachusetts General*** stated,

> [a] holding that notice and hearing are not required for a particular agency promulgation is cushioned by the consequence that it **does not have the binding force attributable to a full-blown regulation**. (Emphasis Added.) **Id.** at pg 707

[1] Although one could argue that the initial Guidelines contained in the Proposed Regulations may be deemed to have the binding force of regulations as they are being promulgated as part of a Chapter 30A proceeding, an equally strong argument can be made that they are not binding as regulations, given the complete discretion afforded to the DOER to make revisions. Clearly, any subsequent revisions of the Guidelines will not be regulations and therefore non-binding.

The fact that in the past the DOER has given the public an opportunity to submit comments on prior draft guidelines and may do so in the future does not transform guidelines into legally binding regulations or validate actions taken thereunder.[2] The DOER's enabling legislation requires that proposed regulations be submitted to the legislature for review and comment. This requirement provides the legislature with regulatory oversight and makes the DOER **answerable** to the legislature and requires the DOER's actions to be openly transparent. The use of Guidelines, even with public comment, can not be substituted for duly promulgated and issued regulations.

The proposed Guidelines cannot be used to clarify the confusion caused by advisory rulings, biomass guidelines and other DOER pronouncements that conflicted with the existing RPS regulations.

The existing RPS regulations specify the circumstances under which a biomass unit is advanced biomass power conversion technology. Although the Legislature did not define the term "advanced biomass power conversion technologies" it clearly excluded stoker technology. Under the existing RPS regulations and through actual practice, the term has been defined to mean fluidized bed technology.

However, biomass developers, the majority of whom desired to convert old pre-1998 stoker technology (RPS ineligible) generation units into fluidized-bed technology (RPS eligible) units and, for many, use in some form or amount commercial & demolition debris as a fuel, sought through advisory rulings the DOER's advance imprimatur that such plans, if completed, would result in a Statement of Qualification.[3] Ridgewood and others objected to many of these advisory rulings (and biomass guidelines) because they (i) enabled converted stoker facilities to participate in the RPS **without a vintage** despite their pre-1998 commercial operation date, (ii) permitted the use a fuel not authorized by the RPS Statute or regulations[4] and, (iii) ultimately, authorized as eligible a stoker facility **without conversion to fluidized bed and without a vintage**, which were clearly contrary to the existing regulations. Through subsequent inquiries and policy statements, the DOER reversed itself on the vintage issues and declared that legislative intent requires that no pre-1998 biomass unit should qualify for the RPS without a vintage.[5]

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[2] There is no indication in the Proposed Regulations that the DOER is required to or will provide public notice and opportunity to comment on any future revisions to the Guidelines.

[3] It is Ridgewood's understanding that none of the biomass advisory rulings involved the construction of truly "new" biomass units or the use of clean sustainable biomass fuels. Thus, the confusion was not whether a new biomass facility using fluidized bed technology proposing to burn sustainable wood would qualify, but rather whether these old stokers, dressed up as new proposing to burn C&D would qualify.

[4] That use of commercial & demolition debris as an Eligible Biomass Fuel is not authorized by the current RPS Regulations is clear, otherwise the DOER would not have needed to specifically include its use in the Proposed Regulations. Despite this lack of regulatory authority, many of the advisory rulings nonetheless authorized the use of C&D.

[5] Despite this pronouncement, the DOER nonetheless agreed to a settlement that qualifies for RPS participation without a vintage requirement two pre-1998 stoker biomass facilities that may or may not convert to fluidized bed technology. Moreover, in the Proposed Regulations, there are several instances (relocation, replacement) where a pre-1998 facility can participate without a vintage.

In any event, given the above described procedure it is not surprising that the biomass industry is confused with respect to matters such as conversions, vintage and C&D. To clarify matters, the DOER should issue a policy statement (as opposed to the Proposed Regulations) that declares (i) all issued advisory rulings no longer valid (as these rulings were never binding legal authority and no 'vested rights" were created thereby), (ii) no pre-1998 biomass facility will qualify without a vintage, regardless of prior advisory rulings or settlement agreements, (iii) as required by the legislature, stoker technology is not advanced, despite qualifying emissions levels, and (iv) advanced biomass power conversions technologies currently includes fluidized-bed technologies and any advancements thereto adopted by the DOER pursuant to the APA.

Finally, there was some discussion at the June 28th public hearing as to whether the advisory ruling process should be maintained or deleted, as proposed by the DOER. From Ridgewood's perspective, the advisory ruling process has served no useful purpose and, as explained above, has contributed significantly to the conflicting signals received from the DOER. In our experience, we have found that lenders will take little comfort from a document that is by law non-binding and conveys no legal rights. Moreover, as we have seen, the process employed (e.g., no meaningful public participation) is susceptible to regulatory creep in which small expansions beyond the scope of the regulations or legislation are followed by additional small advancements until the end result is far beyond the original intent of the legislation. Ridgewood believes that any serious developer, without significant cost or effort, would be in a position to complete and file an Application for a Statement of Qualification with the information developed and available and receive from the DOER preliminary approvals, which are not effective unless and until stated conditions precedent are satisfied. This process, coupled with an expansion of when public hearings are required, will provide an open, transparent and understandable process for determining biomass eligibility.

The Guidelines will not provide clarity and predictability regarding biomass eligibility.

The Guidelines as proposed by the DOER empower it to make revisions when and as it deems necessary and in a manner it deems appropriate. Although in the past the DOER has afforded the public an opportunity to comment on proposed guidelines, there is no requirement in the Guidelines that it do so in the future. If adopted, the DOER's "rubber rules" approach to RPS eligibility can only create more uncertainty and unpredictability. For example, under the Guidelines any subsequent revision is effective immediately, except for eligibility criteria, which is effective 24 months from the date of issuance. Additionally, there is no indication from the DOER that once a revision is made to the eligibility criteria that during the 24-month "waiting period" further revisions will not occur. Thus, the very real possibility exists that the Guidelines could be revised several times within a 24-month period, some revisions including revisions to eligibility criteria and some not. If enough of these revisions occur developers and lenders will need to prepare comprehensive flow charts to determine which eligibility criteria will apply to a Statement of Qualification and for how long. Moreover, since the Guidelines in effect at the time the Statement of Qualification is filed or deemed complete apply to

its consideration, given the varying periods of time needed to review and act upon these Statements of Qualification, the DOER could quite possibly be issuing Statements of Qualification upon criteria that may have been revised perhaps several times and are months or even years past the date they were effective.

The Guidelines establish Secondary Criteria that are not authorized by the RPS Statute.

The Guidelines enable the DOER to qualify a Generation Unit "not clearly eligible" under the fuel conversion requirements if it can demonstrate some advanced "fuel handling and conditioning" technology or can somehow demonstrate that the Generation Unit production from biomass in uncommon and could lead to further technology improvements. Although on the last page of the Guidelines the DOER attempts to add meaning to these secondary eligibility criteria, Ridgewood is still confused as to what these mean, how they will be determined and, most importantly, how they comport with the RPS statute. The RPS statute, on this point, provides that a renewable energy generating source includes "(vii) low-emission, advanced biomass power conversion technologies, such as gasification...." Although the RPS Statute provides the DOER with the ability to consider other technologies, it does not enable a biomass facility **without an advanced biomass power conversion technology** to qualify if it has an "advanced fuel handling and conditioning technology" or a "new market application.." The RPS Statute requires that the biomass power conversion technology be advanced and if a particular biomass Generation Unit does not possess such technology the DOER cannot on its own invent "secondary criteria" in violation of the clear language of the statute.

Commercial & Demolition Debris

Commercial & demolition waste ("C&D") is not a renewable fuel and the DOER should not use the RPS as a means of solving the problems associated with the ban on land filling C&D.

C&D is not a renewable fuel. It is an adulterated waste, pure and simple. Although Ridgewood understands that because of the Massachusetts ban on land filling C&D an alternative solution needs to be found to this waste disposal problem, but the solution is not to "shoehorn" C&D into the definition of an eligible renewable fuel in the RPS. The combustion of C&D in biomass boilers substantially increases both the air and solid waste emission of lead, mercury and other heavy metals. The increase in emissions (either air-borne or solid waste) of these heavy metals is not adequately addressed in the Proposed Regulations or by the Massachusetts DEP.

Those who desire to burn or develop new technologies to gasify or otherwise combust C&D should proceed to do so outside of the RPS. If additional development monies are needed to develop these technologies or to find a solution for the C&D problems in Massachusetts then those concerned should petition the legislature for solutions. What is clear is that the legislature never intended that C&D would qualify as

an eligible fuel for the RPS. Therefore, any solutions to the C&D problem should not be forced upon the RPS program, which was designed and intended for an entirely different purpose.

Behind-the-meter and Off-Grid Generation

Full RPS Qualification for Behind the Meter and Off-Grid Generation will be difficult to meter and verify and will have an unknown impact on the RPS Market.

In the Proposed Regulations, the DOER provides for certain limitations on location with respect to certain Generation Units, including Distributed Generation, Behind the Meter and Off-Grid Generation. A Distributed Generation Unit located outside of Massachusetts can qualify for RECs to the extent of the electrical output delivered to the grid, while a similar unit in Massachusetts seems to qualify for RECs to the extent of all of its output. Behind the Meter and Off-Grid Generation Units outside of Massachusetts do not qualify. Ridgewood will not address in any detail except to point out that prohibiting similarly situated out-of–state generation units from participation based solely on location may violate the Commerce Clause of the U.S. Constitution. The larger concern that Ridgewood has with this section of the Proposed Regulations is that a Behind the Meter or Off-Grid Generation Unit (in Massachusetts) will receive RECs for the Unit's full output when by virtue of their operation "retail sales" in Massachusetts and thus the percentage of renewable energy required by the RPS statute is reduced.

Pursuant to Section 11F of Chapter 25, the percentage of kwh sales to end-use customers from new renewable energy sources is a specified percentage of "sales to end-use customers in the Commonwealth". The Proposed Regulations presume that a Behind the Meter Generation Unit will "displace" the metered consumption of an end-use "retail" customer in Massachusetts, for which, under the Proposed Regulations, such unit would receive full RPS credit. Likewise, an Off-Grid Generation Unit serves an electric customer or load that is no longer part of the "retail market" upon which the RPS renewable percentage is based. The effect of this approach is to artificially depress the RPS load requirement while simultaneously increasing the RECs that are available to satisfy this artificially depressed requirement.

Additionally, the RPS requirement is statutorily based upon a percentage of "retail sales" and that every "retail supplier" is required to comply. The DOER's inclusion as eligible units those units that reduce retail load and whose electric output does not support or serve such retail load is not within the authority granted the DOER by the RPS statute. Moreover, the costs of the RECs that are produced by these Behind-the-Meter and Off-Grid Generation Units are being borne by the ratepayers of Massachusetts without any corresponding benefit. Unlike the output of a Generation Unit in Maine or Connecticut that is delivering to NEPOOL, and thus benefiting all of NEPOOL (including Massachusetts ratepayers), the output of these Behind-the-Meter Units and Off-Grid Generation Units generally benefit only one customer. As a result and at the very least, in order to respect the legislative framework that sets the REC requirement,

the DOER should require that any Massachusetts load displaced by a Behind the Metter or Off-Grid Generation Unit still be included as a "retail sale" in the determination of the new renewable percentage requirement.

Finally, because these Behind-the-Meter and Off-Grid Generation Units are by definition not part of NEPOOL, their output cannot be metered or independently verified by the ISO. Moreover, it is not necessarily clear that the electrical output of these Units can be metered and verified pursuant to Section 14.04(4)(a) of the Proposed Regulations applicable to Small Generation Units. A Small Generation Unit is not defined by the Proposed Regulations but presumably is a Unit, regardless of size, that is not part or a member of the ISO such that the output is part of the ISO–NE Market Settlement System. If such is the case, then the metering system and verification is whatever the DOER deems satisfactory without resort to any independent verification. It is unwise to authorize the use of generator records that are not independently verifiable to determine production and other information when such verification is required by other generators participating in the REC market.

VINTAGE WAIVER ISSUES

There is no market information as to how relocated and replaced Generation Units, participating without a vintage, will affect the RPS Market. As a result, the DOER should delete this provision from the Proposed Regulations and study the potential impact.

With the introduction of the concepts of a "relocated generation unit" and "replaced generation unit" the DOER will enable certain pre-1998 Generation Units to qualify (assuming other requirements are met) for the RPS **without a vintage**. The concepts of a relocated or replaced Generation Unit, however, have been simply introduced by the DOER without any statutory authority or market research as to why such concepts are necessary to the RPS, how they will affect the RPS market, or any specification as to exactly what will constitute a "relocated" or "replaced" Generation Unit other than to exclude landfill, again without support for or explanation of such action. In any event, given the lack of specificity, events will unfold in a manner similar to that experienced with respect to retrofitted biomass units. Developers of proposed relocated or replaced Generation Units will flood the DOER with inquiries as to what qualifies in order to get prior "comfort" that what they propose to do will qualify. Moreover, given the complexities associated with relocating or replacing a Generation Unit, without clear and specific requirements, these activities are easily susceptible to conflicting and inconsistent rulings.

Additionally, there is no indication at all as to whether the DOER conducted any meaningful market research or analysis as to the impact of relocated and replaced facilities on the RPS market. What will qualify as a relocated or replaced facility? How many potential facilities may relocate to NEPOOL or replace their existing equipment? Without a vintage, how many RECs could be generated? What is the potential impact to the RPS market? If the DOER has conducted this background market research, then it

should share its results with the public prior to adopting these provisions. If the DOER has not conducted any research into the potential impact associated with these provisions, then Ridgewood respectfully requests that these provisions be deleted from the Proposed Regulations, studied by the DOER and then, if warranted, resurrected in subsequent proposed regulations. Nevertheless, should the DOER elect to proceed on these concepts, Ridgewood suggests:

Relocation:

(a) At a minimum, in order to qualify under this subsection, the facility's prime generating equipment (i.e., boiler, turbine, wind blades) as well as **all** other equipment capable of being relocated must be relocated such that, except for minor non-essential equipment (i.e., copiers, minor fixtures, etc), the "facility" has been relocated.

(b) The equipment relocated must be all from the same site and must have operated combined as a Generation Unit. An owner or operator seeking to take advantage of this provision should not be permitted to purchase some equipment from one site, other equipment from another such site and assemble them as a "relocated facility" even though that configuration of equipment has never functioned as an electric generating facility in the past. Moreover, Ridgewood suggest that the DOER specifically prohibit such a "reconstituted facility" configured from separate used (pre-1998) equipment from participating in the RPS as a "new" (non-vintage) facility, regardless of where the equipment and parts for such facility were located or previously operated.

Replaced Generation

(a) This provision applies to every RPS qualifying technology except one – landfill. The DOER has provided no background, explanation or justification for this disparate treatment. It makes little sense to preclude a developer from developing a new landfill generating facility on a landfill site that may have had a landfill Generation Unit operating on it prior to 1998. The same holds true for a developer that is currently operating on the landfill who desires to replace its old, used, probably inefficient equipment with state of the art technology. Even if a landfill is no longer accepting waste, if a developer determines that the site is capable of supporting (from a landfill gas availability perspective) a Generation Unit where one once operated or decides to replace the existing facility for the remaining life of the landfill or the power contract, then such development should be encouraged by the DOER or, at a minimum, receive the same treatment as other RPS technologies.

(b) The DOER must provide some additional guidance in the Proposed Regulations as to what exactly constitutes a "replaced" facility. Ridgewood refers the DOER to the Rhode Island Renewable Energy Standard which reviewed this issue and adopted regulations on the point that had strong constituency acceptance.[6]

[6] Specifically, the DOER should review Section 3.22 of the regulations of the Rhode Island Renewable Energy Standard for the definition of what constitutes a "New Renewable Energy Resource; Section 3.28

Review Procedures

The DOER can avoid a great deal of confusion by expanding the proceedings that will receive public hearings.

Ridgewood has in the past objected at various forums to the DOER's practice of giving advisory rulings or reviewing Statements of Qualification without any meaningful input from the public. The current regulations that provide for when public hearings are required are insufficient to afford the public meaningful participation in the RPS. In Ridgewood's view, the July 2005 public conference held by the DOER was an extremely beneficial experience, provided for a public debate on various issues, and obtained valuable public input. Furthermore, much of the "confusion" regarding the biomass advisory rulings, statements of qualification applications and the issues therein would have been lessened or negated had the DOER held open, public hearings regarding the merits of the ruling request or statement of qualification. As a result, Ridgewood suggests that DOER adopt a policy that public hearings be conducted prior to any DOER action with respect to Statements of Qualification for:

a) any biomass facility (existing or proposed) regardless of whether it has a valid air permit;

b) any Generation Unit that is or intends to be a "replacement" of an existing Generation Unit;

c) any Generation Unit that is or intends to qualify as a unit relocated from a non-NEPOOL control area;

d) any Generation Unit(s) that intend to qualify as an Aggregation; and

e) any Generation Unit that intends to qualify as a Behind-the-Meter or Off-Grid Generation Unit, so that the manner in which these units REC will be metered and verified can be subject to public review and comment.

The above proceedings, in Ridgewood's view, represent those that are most susceptible to contradictory or inconsistent rulings. With public participation, the DOER can be assured that such inconsistencies will be highlighted and, as a result, eliminated or significantly decreased.

Miscellaneous

1) **Definition of Commercial Operation Date.** The term "electrical energy" was deleted and replaced with "power" but yet the term "electrical energy" is retain and used twice later on in the definition. Is there a reason why "electrical energy" was deleted in one part of the definition but not the remainder of the definition? In the DOER's view, what is the difference, if any, between the two terms?

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for the definition of what constitutes a "Repowered Generation Unit"; Section 3.26 for the definition of what constitutes a "Prime Mover" and Section 3.6 for the definition of "Eligible Biomass Fuel."

2) **Section 14.05(3), Co-Firing and Composite Fuel Waiver.** Ridgewood suggest that in section 14.05(3)(b) regarding the use of an Eligible Biomass Fuel that the DOER make it clear that the Generation Unit must meet its emissions requirements during all hours of operation and not only when it is co-firing or using a composite fuel.

3) **Section 10.5(4), Special Provisions for Small Generation Units.** Ridgewood incorporates its comments set forth above regarding the problems and difficulties associated with the "DOER's reasonable satisfaction" methodology of metering and verifying Behind-the-Meter and Off-Grid Generation. The same objections apply here. In addition, although the provision expressly applies to Small Generation Units, there is no definition of that term nor is there a size limitation. Ridgewood suggests that this provision be limited to truly small generators of 500 kw or less.

4) **Section 14.05(5), Special Provisions for Generation Unit Located in a Control Area adjacent to the ISO-NE Control Area.** Ridgewood agrees with and supports the principles set forth this section except that the reference to Rule 2.7 should be modified to read "Rule 2.7 (c)":

Rule 2.7 (c) specifically deals with the concept of power imported pursuant to a unit contract ("Imported Unit Energy"), the concept that the DOER is attempting to define further in its proposed changes to its regulations. Rule 2.7 deals with the general concept of imported power of which Rule 2.7 (b) deals with the concept of power imported pursuant to a system contract ("Imported System Energy"). The concept of using system contracts to define imported renewable energy was debated vigorously during 2001 and 2002 and rejected by a super majority of the parties (85%), including all of the participating state regulatory agencies or commissions. Accordingly, to remove any potential confusion that might arise if a reference to Rule 2.7 is made, Ridgewood strongly suggests that the reference be made to Rule 2.7 (c), in order to prevent someone in the future from raising the issue that the DOER in its reference to Rule 2.7 really meant a reference to Rule 2.7 (b).

5) **Section 14.05(6), Special Provisions for Aggregations**. Ridgewood suggests that this provision be amended to incorporate a size limitation such that a Generation Unit in excess of 500 kw can not participate in the RPS as part of an aggregation. Since aggregation is limited to Off-Grid Generation Units, which typically will be small units installed in homes or small business where connection to the grid is prohibitively expensive, the size limitation Ridgewood suggestion should not create any difficulties or issues as to inclusion.

6) **Section 14.08(3), Alternative Compliance**. Ridgewood's sole comment on this section of the Proposed Regulations is directed towards the DOER's ability to designate another recipient of the alternative compliance payment. Ridgewood suggests that the DOER provide further details as to who or what such designee may be. Ridgewood's view is that the Massachusetts Technology Park Corporation has not administered the ACP funds in a manner that is beneficial to the advancement of the RPS.

Any change in the recipient of the ACP should be accomplished through a change in regulations or, at the very least, with the approval of the Joint energy Committee.

7) **Section 14.05(1) (a) (5).** Anaerobic digester gas should not be defined in the same phrase as landfill gas. The RPS statute makes specific reference to landfill gas but no specific reference to anaerobic digester gas. The statute instead makes reference to biogas, which includes anaerobic digester gas but excludes landfill gas.

While landfill gas is produced from an anaerobic digestion process, digester gas is not landfill gas but rather biogas, an Eligible Biomass Fuel. Consequently, the definition of biogas found in Eligible Biomass Fuel should be modified from "... crops; biogas; organic ..." to "... crops; biogas, including anaerobic digester gas but excluding landfill gas; organic ...". In a similar manner, the use of the phrase "... or anaerobic digester ..." in the definition of Eligible New Renewable Fuel should be dropped since, per the statute, anaerobic digester gas is biogas and, accordingly, is already included in the definition of Eligible Biomass Fuel.

8) **Definition of NE-GIS**. In several places, the current regulations and the proposed changes make references to "NE-GIS." The term should be either the New England Power Pool Generation Information System or NEPOOL GIS. Accordingly, this oversight should be corrected throughout the document.

9) **Definition of ISO-NE Settlement Market System**. In several places in the proposed changes to the regulations, the term "ISO-NE Settlement Market System" is used. The term should be the "ISO-NE Market Settlement System." Accordingly, this oversight should be corrected throughout the document.

10) **Definition of GIS Certificate**. In the definition of the "GIS Certificate", the words "some of the" should be inserted immediately following the word "identifies." The GIS Certificate was meant to include only certain specific Generation Attributes and no attempt should be made by these regulations to include any attribute other than the ones specifically currently mentioned in GIS Operating Rules.

Ridgewood appreciates the opportunity to provide these comments to the DOER and looks forward to working with the DOER and other market participants regarding these Proposed Regulations.

Very truly yours,

Daniel V. Guiney