

Adopt new 310 CMR 7.75 Clean Energy Standard, to read as follows:

310 CMR 7.75 CLEAN ENERGY STANDARD

- (1) Purpose, Authority and Scope. The ~~purposes~~purpose of this regulation ~~are~~, promulgated in conjunction with 310 CMR 7.74, is to achieve assist the Commonwealth in achieving the greenhouse gas emissions ~~reductions~~reduction goals adopted pursuant to M.G.L. c. 21N, Section 3(b), by setting establishing a clean energy standard (CES) that will increase the ~~amount~~level of clean ~~energy that is used to generate~~ electricity ~~consumed~~that is purchased from the regional electric grid for consumption in Massachusetts, ~~and to implement the requirement.~~ To achieve those goals, the Executive Office of Energy and Environmental Affairs (EEA) and the Department, pursuant to M.G.L. c. 21A, §§ 2 and 8 and M.G.L. c. 21N, §§ 3(c), 4 and 7, hereby jointly promulgate 310 CMR 7.75 following consultation with the Department of Energy Resources (DOER) and based on the considerations specified in M.G.L. c. 21N, § 3(c). In exercising their broad authority and discretion under M.G.L. c. 21N, §§ 3(c), EEA and the Department have determined that establishing the CES, along with the Commonwealth's other climate programs and policies, will ensure achievement of the greenhouse gas emissions limits as established under M.G.L. c. 21N, and that the 310 CMR 7.75 levels are consistent with, and take account of, regional programs such as the Regional Greenhouse Gas Initiative (RGGI) and the Renewable Portfolio Standard (RPS). The Department is also consolidating in this regulation a requirement previously codified at 310 CMR 7.71(9) for retail sellers of electricity to report statewide greenhouse gas emissions and to monitor and ensure compliance with the reporting provisions of M.G.L. c. 21N, § 2(a)(5). 310 CMR 7.75 is also promulgated pursuant to M.G.L. c. 21A, § 16 and M.G.L. c. 111, §§ 2C and 142A-142E.
- (2) Definitions. The terms used in 310 CMR 7.75: ~~Clean Energy Standard~~ are defined in 310 CMR 7.75(2) and in 310 CMR 7.00: *Definitions*. Where a term is defined in both 310 CMR 7.00: *Definitions* and ~~310 CMR 7.75~~, the definition in 310 CMR 7.75 shall apply.

Biogenic Greenhouse Gas Emissions. Emissions of carbon dioxide that result from the combustion of biogenic (plant or animal) material, excluding fossil fuels.

Business Day. A business day shall mean Monday through Friday, exclusive of state and federal legal holidays.

Carbon Dioxide Equivalent. The amount of carbon dioxide by weight that would produce the same amount of global warming impact as a given weight of another greenhouse gas.

Certificates Obligation. A term defined in the NEPOOL GIS operating rules at Rule 4.1(b).

CES Alternative Compliance Credit. A credit obtained by a retail ~~seller of~~ electricity ~~supplier~~ upon making a CES alternative compliance payment. Such credit is used to document compliance with 310 CMR 7.75(4). One unit of credit shall be equivalent to one clean generation attribute.

CES Alternative Compliance Payment (CES ACP). A payment of a certain dollar amount per MWh, resulting in the issuance of CES alternative compliance credits, which a retail seller of electricity ~~supplier~~ may submit to the Department in *lieu* of providing clean generation attributes required under 310 CMR 7.75(4).

CES Statement of Qualification. A written document from the Department that qualifies a generation unit as a clean generation unit, or that qualifies a portion of the annual electrical energy output of a generation unit as clean generation.

Clean Generation. The electrical energy output excluding any electrical energy utilized for parasitic load of a clean generation unit, or that portion of the electrical energy output excluding any electrical energy utilized for parasitic load of a clean generation unit that qualifies under: ~~(1)~~

(a) the special provisions for a generation unit located in a control area adjacent to the ISO-NE control area, pursuant to 310 CMR 7.75(7)(b); or ~~(2) any other applicable provision of 310 CMR 7.75 or 225 CMR 14.00.~~

(b) any other applicable provision of 310 CMR 7.75 or 225 CMR 14.00 Renewable Energy Portfolio Standard – Class I.

Clean Generation Attribute. The generation attribute of the electrical energy output of a specific clean generation unit that derives from the unit's production of clean generation.

Clean Generation Unit. A generation unit or aggregation that has received a CES statement of qualification from the Department, or that has received an RPS statement of qualification from DOER.

Commercial Operation Date. The date that a generation unit first produces electrical energy for sale within the ISO-NE control area or within an adjacent control area. In the case of transmission capacity that is used to transmit clean energy, the date on which the transmission capacity first transmitted energy into the ISO-NE control area or an adjacent control area.

Compliance Filing. A document filed annually by a retail seller of electricity ~~supplier~~ in a format determined by the Department documenting compliance with 310 CMR 7.75(4), submitted no later than the first day of July, or the first business day thereafter, of the subsequent compliance year.

Compliance Year ~~(CY)~~. A calendar year beginning January 1st and ending December 31st, for which a retail seller of electricity ~~supplier~~ that is not an Municipal Electric Department or Municipal Light Board must demonstrate that it has met the requirements of 310 CMR 7.75(4) and (5).

Control Area. A geographic region in which a common generation control system is used to maintain scheduled interchange of electrical energy within and without the region.

Dedicated Transmission Line. A transmission line with a commercial operation date after December 31, 2017 that is not electrically connected to any generation unit that is not a clean generation unit.

Emitting Electricity Generators. Electricity generators that are powered by any fossil or biogenic fuels.

Emitting Megawatt Hours. Megawatt hours that are generated by emitting electricity generators.

End-use Customer. A person or entity in Massachusetts that purchases electrical energy at retail from a retail seller of electricity-~~supplier~~, except that a generation unit taking station service at wholesale from ISO-NE or self-supplying from its owner's other generating stations, shall not be considered an end-use customer.

Generation Attribute. A non-price characteristic of the electrical energy output of a generation unit including, but not limited to, the unit's fuel type, emissions, vintage and eligibility for renewable or clean energy programs.

GIS Certificate. An electronic record produced by the NEPOOL GIS that identifies generation attributes of each MWh accounted for in the NEPOOL GIS.

Greenhouse Gas. Any chemical or physical substance that is emitted into the air and that the Department may reasonably anticipate will cause or contribute to climate change including, but not limited to, carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride.

Intermittent Generation Unit. As determined by the Department, a generation unit that utilizes resources regarding which the timing or magnitude-~~that~~ is not predictable or controllable.

ISO-NE. ISO New England Inc., the independent system operator for New England, the regional transmission organization for most of New England, which is authorized by the Federal Energy Regulatory Commission (FERC) to exercise for the New England Control Area the functions required pursuant to the FERC's Order No. 2000 and the FERC's corresponding regulations.

ISO-NE Settlement Market System. The ISO-NE's electronic database system into which all real-time load and generation data are entered and from which such data are provided to the NEPOOL GIS.

Lifecycle Greenhouse Gas Emissions. The aggregate quantity of greenhouse gas emissions, including, but not limited to, direct emissions and significant indirect emissions such as significant emissions from land use changes, and temporal changes in forest carbon sequestration and emissions resulting from biomass harvests, regrowth, and avoided decomposition as determined by the department, related to the full fuel lifecycle,

including all stages of fuel and feedstock production and distribution, from feedstock generation or extraction through the distribution and delivery of the finished fuel to the ultimate consumer, where the mass values for all greenhouse gases are adjusted to account for their relative global warming potential.

~~Massachusetts Clean Energy Technology Center (MassCEC). The center established in M.G.L. c. 23J, § 2.~~

Massachusetts Department of Energy Resources or DOER. The Massachusetts agency established pursuant to M.G.L. c. 25A, §§ 1 through 13.

Megawatt-hour (MWh). A unit of electrical energy or work equivalent to one million watts of power operating for one hour.

~~Municipal Electric Department (MED).~~ A municipal electric department as defined in M.G.L. c. 164A, § 1.

~~Municipal Light Board (MLB).~~ A municipal light board as defined in M.G.L. c. 164A, § 1.

NEPOOL GIS. The NEPOOL Generation Information System, which includes a generation information database and certificate system, operated by the New England Power Pool (NEPOOL), its designee or successor entity, that accounts for generation attributes of electrical energy consumed and generated within, imported into, or exported from the ISO-NE control area.

NERC Tag. A document that identifies an electrical energy interchange transaction and its associated participants, assigned in accordance with rules set forth by the North American Electric Reliability Corporation (NERC), a non-profit corporation granted by the FERC the legal authority to enforce mandatory reliability standards for the U.S. bulk power system, subject to FERC oversight.

Non-emitting Electricity Generators. Electricity generators powered by hydro, nuclear, ocean, solar or wind power.

Non-emitting Megawatt Hours. Megawatt hours that are generated by non-emitting electricity generators.

Operator. Any person or entity that has charge or control of a generation unit subject to 310 CMR 7.75(7) ~~–through~~ (9), including without limitation a duly authorized agent or lessee of the owner, or a duly authorized independent contractor.

Owner. Any person or entity that, alone or in conjunction with others, has legal ownership, a leasehold interest, or effective control over the real property or property interest upon which a generation unit is located, or the airspace above said real property, including without limitation a duly authorized agent of the owner. For the purposes of

310 CMR 7.75, ~~owner~~**Owner** does not mean a person or entity holding legal title or security interest solely for the purpose of providing financing.

Retail Electricity Product. An electrical energy offering that is distinguished by its generation attributes and that is offered for sale by a retail **seller of** electricity-~~supplier~~ to end-use customers.

Retail **Seller of** Electricity ~~Seller~~ or Retail Seller. A competitive supplier licensed by the Department of Public Utilities or, as each is defined in M.G.L. c. 164A, § 1, an electric utility, municipal electric department or municipal light board that is connected to the regional electric grid.

RPS Alternative Compliance Credit. A credit obtained by a retail **seller of** electricity ~~supplier~~ upon making a payment pursuant to 225 CMR 14.08(3), and used to comply with 225 CMR 14.07: *Renewable Energy Portfolio Standard – Class I.*

RPS Class I Renewable Generation Unit. A generation unit or aggregation that has received a statement of qualification as an RPS Class I renewable generation unit from DOER pursuant to 225 CMR 14.00: *Renewable Energy Portfolio Standard – Class I.*

RPS Statement of Qualification. A written document issued by DOER pursuant to 225 CMR 14.06: *Qualification Process for RPS Class I, Solar Carve-out Renewable Generation Units, and Solar Carve-out II Renewable Generation Units* that qualifies a generation unit or aggregation as an RPS Class I qualified generation unit, or that qualifies a portion of the annual electrical energy output of a generation unit.

Short Ton. 2000 pounds or 0.9072 metric tons.

(3) Applicability. Retail ~~electricity~~-sellers are required to comply with 310 CMR 7.75.

(4) Clean Energy Standard. Beginning in calendar year 2018, the total annual sales of each retail electricity product sold to Massachusetts end-use customers by a retail ~~electricity~~-seller **that is not an MED or MLB** shall include a minimum percentage of electrical energy sales with clean generation attributes. For calendar years 2018 through 2050, percentage requirements are listed in 310 CMR 7.75(4): Table A.

~~(a) 2018 – 2050 Standards. For calendar years 2018 – 2050, percentage requirements are listed in 310 CMR 7.75(4)(a) Table A.~~

310 CMR 7.75(4)(a): Table A

Year	Retail Sellers, except Municipal Light Boards and Municipal Electric Departments and Municipal Light Boards
2018	16%
2019	18%
2020	20%
2021	22%

2022	24%
2023	26%
2024	28%
2025	30%
2026	32%
2027	34%
2028	36%
2029	38%
2030	40%
2031	42%
2032	44%
2033	46%
2034	48%
2035	50%
2036	52%
2037	54%
2038	56%
2039	58%
2040	60%
2041	62%
2042	64%
2043	66%
2044	68%
2045	70%
2046	72%
2047	74%
2048	76%
2049	78%
2050, and each year thereafter	80%

~~(b) Provisions for Municipal Electric Departments and Municipal Light Boards with Interests in Existing Clean Generation Units. For the purpose of determining compliance with 310 CMR 7.75(4), municipal electric departments and municipal light boards may subtract from total annual sales any MWh associated with contractual or ownership interests that satisfy the following requirements:~~

- ~~1. The contractual or ownership interests are with generation units that utilize nuclear or hydroelectric energy, or energy resources listed at 225 CMR 14.05(1)(a), and do not participate in any voluntary or regulatory program that allows or requires the sale of marketable environmental or energy attributes associated with the MWh subtracted from total annual sales, and,~~
- ~~2. The contractual or ownership interests were entered into or existed before~~

~~September 30, 2014.~~

(5) Compliance Procedures for Retail Electricity Sellers that are not MEDs or MLBs.

(a) Standard Compliance. Each retail ~~electricity~~ seller subject to 310 CMR 7.75(4) shall be deemed to be in compliance with 310 CMR 7.75 if the information provided in the compliance filing submitted pursuant to 310 CMR 7.75(5) is true and accurate and demonstrates compliance with 310 CMR 7.75(4). ~~Asuch~~ retail ~~electricity~~ seller shall demonstrate, using a form provided by the Department or DOER that clean generation attributes used for compliance have not otherwise been, nor will be, sold, retired, claimed, used or represented, as part of electrical energy output or sales, or used to satisfy obligations in jurisdictions other than Massachusetts.

(b) Banked Compliance. ~~A~~

1. Beginning in 2021, a retail ~~electricity~~ seller subject to 310 CMR 7.75(4) may use clean generation attributes produced in ~~one compliance year for compliance in~~ either or both of the two ~~subsequent~~ prior compliance years, subject to the limitations in 310 CMR 7.75(5)(b) and provided that the retail ~~electricity~~ seller is in compliance with 310 CMR 7.75 for all previous compliance years. In addition, the retail ~~electricity~~ seller shall demonstrate, using a form provided by the Department or DOER, that such attributes:

1a. Were in excess of the clean generation attributes needed for compliance in the compliance year in which they were generated, and that such excess attributes have not previously been used for compliance with 310 CMR 7.75;

2b. Do not exceed 30% of the clean energy generation attributes needed by the retail ~~electricity~~ seller for compliance with 310 CMR 7.75(4) in the year they were generated, subject to 310 CMR 7.75(5)(b)~~4~~; 1.d.:

3c. Were produced during the compliance year in which they are claimed as excess by the generation of electrical energy sold to end-use customers in the ISO-NE control area; and

4d. Have not otherwise been, nor will be, sold, retired, claimed or represented as part of electrical energy output or sales, or used to satisfy obligations in jurisdictions other than Massachusetts.

2. Any RPS-eligible renewable generation attributes claimed for compliance with RPS pursuant to 225 CMR 14.08(2) and used to comply with 225 CMR 14.07: Renewable Energy Portfolio Standard – Class I in a particular year shall be counted toward compliance with 310 CMR 7.75 in that year.

(c) Alternative Compliance. Any RPS alternative compliance credits claimed pursuant to 225 CMR 14.08(3)(a) and used to comply with 225 CMR 14.07: Renewable Energy Portfolio Standard – Class I shall be counted toward compliance with 310 CMR 7.75. A retail ~~electricity~~ seller subject to 310 CMR 7.75(4) may discharge its obligations under 310 CMR 7.75(4), in whole or in part, by making a CES ACP to the ~~MassCEC. Such funds shall be held in an account separate from other accounts of the~~ MassCEC Department. Such funds shall be deposited in a segregated account, which may be the same account established to receive auction proceeds under 310 CMR 7.74(6)(h)1.i., administered by a Trustee appointed by EEA and the Department, and used for the purposes set forth in 310 CMR 7.75(5)(c)2.

1. Procedures. A retail ~~electricity~~ seller subject to 310 CMR 7.75(4) shall receive CES alternative compliance credits from the Department, subject to the following:
 - a. The quantity of credits, specified in MWh, that can be applied to its obligations under 310 CMR 7.75(4) shall be determined by calculating the ratio of the total of CES ACPs paid for the compliance year to the CES ACP rate for that compliance year.
 - b. The CES ACP rate in dollars shall be 0.~~575~~ times the rate calculated annually by DOER pursuant to 225 CMR 14.08(3)(a)2 for years 2018-2020, and 0.50 times the rate calculated annually by DOER pursuant to 225 CMR 14.08(3)(a)2 for years 2021-2050.
 - c. ~~The retail electricity seller shall include with its annual compliance filing copies of any CES ACP receipt(s) for CES ACPs made to the MassCEC for the compliance year.~~

2. Use of Funds. CES ACP funds shall be expended ~~for to further~~ the ~~purposegoals~~ of ~~furthering the commercial development of clean energy generators, and to support Commonwealth M.G.L. c. 21N by supporting~~ programs ~~and projects to reduce greenhouse gas emissions~~ to mitigate the impacts of climate change ~~and programs~~, including but not limited to clean energy and vehicle electrification projects; programs or projects to support adaptation to the impacts of climate change, ~~including~~; mitigation or adaptation programs or projects involving communities that are already adversely impacted by air pollution, including but not limited to environmental justice communities; and for the administration of any such programs. Such or projects. CES ACP funds ~~shall~~ may also be ~~expended~~ used for the administration of 310 CMR 7.75. CES ACP funds shall be expended at the direction of the Trustee, in consultation with EEA and the Department. The Trustee, EEA and the Department may consult with and enter into agreements with other agencies within the Energy and Environmental Affairs Secretariat to assist in the administration and expenditure of CES ACP funds.

(d) Treatment of Existing Contracts. Notwithstanding 310 CMR 7.75(4), in determining the total CES-qualified MWh applied to each retail seller subject to 310 CMR 7.75(4) in 2018 and 2019, the Department shall not include that portion of electrical energy sales that were subject to a contract executed or extended prior to August 11, 2017, provided that the electricity was sold at a price specified in the contract and the retail seller provides the Department with satisfactory documentation of the terms of such contracts. Contracted electrical energy delivered after December 31, 2019 shall be included in the CES, regardless of the contract's date of execution or extension.

1. In order to demonstrate eligibility of contracts for exemption under 310 CMR 7.75(5)(d), retail sellers shall provide the relevant documentation by December 31, 2017 in accordance with a form prescribed by the Department, including, but not limited to, the execution and expiration dates of the contracts and the projected annual volume of electric energy supplied at a contract-specified price.

2. In order to demonstrate eligibility of electrical energy sales for exemption under 310 CMR 7.75(5)(d), retail sellers shall provide the relevant documentation by July 1 of the year after the sales occurred, along with information required in

accordance with a form prescribed by the Department, including, but not limited to, the execution and expiration dates of the contracts and the actual annual volume of electric energy supplied at a contract-specified price.

(6) Annual Compliance Filings for Retail ~~Electricity~~ Sellers that are not MEDs or MLBs.

(a) Date of Annual Compliance Filing. For each compliance year, each retail ~~electricity~~ seller subject to 310 CMR 7.75(4) shall file an annual compliance filing with the Department no later than the first day of July, or the first business day thereafter, of the subsequent compliance year. ~~All~~Such retail sellers shall complete an annual compliance report for compliance years 2018 ~~through~~ 2050.

(b) Contents of Annual Compliance Filing. For each retail electricity product, the filing shall document compliance with the provisions of 310 CMR 7.75(4) and (5) using a form provided by the Department and shall include, but not be limited to, the following:

1. Total Electrical Energy Sales to End-use Customers. Documentation of the total MWh of electrical energy allocated by the retail seller to end-use customers in the compliance year. Such allocation is defined as the total quantity of such seller's certificates obligation that the seller correctly allocated or should have allocated to all of the seller's Massachusetts retail subaccounts in the NEPOOL GIS, in compliance with all relevant provisions of Part 4 of the NEPOOL GIS Operating Rules, as specified in the Guideline on the Determination of Sales to End-~~Useuse~~ Customers.

2. Electrical Energy Sales to End-use Customers by Product. Documentation of the total MWh of each retail electricity product allocated by the retail seller to end-use Massachusetts customers in the compliance year, verified by an independent third party satisfactory to the Department. Such allocation is defined as the quantity of the seller's certificates obligation that the seller correctly allocated or should have allocated to each of the seller's Massachusetts retail subaccounts at the NEPOOL GIS, in compliance with all relevant provisions of Part 4 of the NEPOOL GIS Operating Rules, as specified in the Guideline on the Determination of Sales to End-~~Useuse~~ Customers.

3. Attributes Allocated from the Compliance Year. Documentation of the total MWh of each retail electricity product allocated by the retail seller to end-use Massachusetts customers that were derived from clean generation during the compliance year, as follows:

a. For electrical energy transactions included in the ISO-NE Settlement Market System, the compliance filings shall include documentation from the NEPOOL GIS administrator of the retail ~~electricity~~ seller's ownership of GIS certificates representing clean generation during the compliance year.

b. For electrical energy transactions not included in the ISO-NE Settlement Market System, but for which the retail ~~electricity~~ seller has secured GIS certificates from the NEPOOL GIS, the compliance filings shall include documentation from the NEPOOL GIS of the retail ~~electricity~~ seller's ownership of GIS Certificates representing clean generation during the compliance year.

4. Attributes Allocated from Banked Compliance. Allocation by each retail seller,

itemized by retail electricity product, of any quantity of clean generation attributes banked from one or both of the two previous years pursuant to 310 CMR 7.75(5)(b) that are used to demonstrate compliance with the clean energy standard in the current compliance year.

5. CES Alternative Compliance Credits. Allocation by each retail seller, itemized by retail electricity product, of any CES alternative compliance credits claimed pursuant to 310 CMR 7.75(5)(c)1. or RPS alternative compliance credits claimed pursuant to 225 CMR 14.08(3)(a), along with a copy of any alternative compliance payment receipt(s).

6. Attributes Banked for Future Compliance. Identification of any quantity of attributes from clean generation, that the retail ~~electricity~~ seller anticipates claiming for purposes of banked compliance in subsequent years under the banked compliance provisions of 310 CMR 7.75(5)(b).

(7) Eligibility Criteria for Clean Generation Units.

(a) Eligibility Criteria. A generation unit may qualify as a clean generation unit subject to the limitations in 310 CMR 7.75(7). The Department shall consider all limitations in 310 CMR 7.75(7), including the emissions criteria in 310 CMR 7.75(7)(a)1.~~ba.ii.~~, when considering whether to provide the owner or operator of such unit with a CES statement of qualification pursuant to 310 CMR 7.75(8)(c).

1. Fuels, Energy Resources and Technologies. ~~The~~In order to be considered by the Department for qualification, a generation unit ~~shall~~must satisfy at least one of the ~~following~~ two eligibility criteria: in 310 CMR 7.75(7)(a)1.a. and not be excluded by 310 CMR 7.75(7)(a)1.b.

a-a. A generation unit must satisfy at least one of the following two eligibility criteria:

i. The generation unit has been issued an RPS statement of qualification as an RPS Class I renewable generation unit pursuant to 225 CMR 14.06(3); ~~or,~~

b.ii. The generation unit has net lifecycle GHG emissions, over a 20 year life cycle, that yield at least a 50% reduction of greenhouse gas emissions per unit of useful energy relative to the lifecycle greenhouse gas emissions from the aggregate use of the operation of a new combined cycle natural gas electric generating facility using the most efficient commercially available technology as of the date of the statement of qualification application for the portion of electricity delivered by the generation unit, ~~provided that a:~~

b. A generation unit that does not satisfy applicable fuel, energy resource, or technology-specific provisions or limitations in 225 CMR 14.05(1)(a)5.a.—e., 6.b.—g., or through 7.a.—g. may shall not qualify as a clean under 310 CMR 7.75(7); provided, however, that any generation unit unless it that is a hydroelectric generator that does not satisfy has a nameplate capacity greater than 30 megawatts may qualify under 310 CMR 7.75(7) if it satisfies the limitation emissions criteria in 225310 CMR 14.05(7.75(7)(a)1)(a)6.a.ii.

2. Commercial Operation Date. For a generation unit that qualifies as a clean

generation unit pursuant to 310 CMR 7.75(7)(a)1.~~ba.ii.~~, the commercial operation date shall be after December 31, 2010.

3. Metering. For a generation unit that qualifies as a clean generation unit pursuant to 310 CMR 7.75(7)(a)1.~~b.~~, the electrical energy output from the generation unit shall be verified by the ISO-NE or by an independent verification system or person participating in the NEPOOL GIS accounting system as an independent Third Party Meter Reader, as defined in Rule 2.5(j) of the NEPOOL GIS Operating Rules, and approved by the Department.

4. Capacity Obligation. For a generation unit that qualifies as a clean generation unit pursuant to 310 CMR 7.75(7)(a)1.~~b.~~, the generation unit's generating capacity is subject to the obligations in 310 CMR 7.75(7)(a)4.

a. The amount of the generation capacity of the generation unit whose electrical energy output is claimed as clean generation shall not be committed to any control area other than the ISO-NE control area, unless such generation unit has entered into a capacity obligation in another control area before the start of the first available compliance year for the ISO-NE forward capacity market, in which case ~~this subsection~~ 310 CMR 7.75(7)(a)4.a. shall apply upon the expiration of that capacity obligation.

b. The generation unit owner or operator of a generation unit that is not an intermittent generation unit shall commit to the ISO-NE Control Area the amount of the capacity of that unit claimed as clean generation by submitting, by the applicable deadline, a show of intent for the ISO-NE forward capacity auction that is the earliest available for the unit after the owner or operator has submitted a CES statement of qualification application, unless the owner or operator can provide to the Department documentation of its prior commitment to the ISO-NE control area of such capacity. The owner or operator of any unit that cannot demonstrate such prior commitment must also clear the forward capacity auction for which it has qualified, even if it must participate as a price taker.

c. A clean generation unit that was deemed unqualified by the ISO-NE for participation in the ISO-NE forward capacity market for technical reasons may commit capacity to another control area and may receive GIS certificates for the energy sold into the ISO-NE control area, subject to a determination by the Department.

(b) Special Provisions for a Generation Unit Located in a Control Area Adjacent to the ISO-NE Control Area. The portion of the total electrical energy output of a clean generation unit located in a control area adjacent to the ISO-NE control area that qualifies as clean generation shall meet the requirements in Rule 2.7(c) and all other relevant sections of the NEPOOL GIS Operating Rules, and the requirements in 310 CMR 7.75(7)(b).

1. The generation unit owner or operator shall provide documentation, using a form provided by the Department or DOER, of a contract or other legally enforceable obligation, that is executed between the generation unit owner or operator and an electrical energy purchaser located in the ISO-NE control area for delivery of the unit's electrical energy to the ISO-NE control area. Such documentation shall include provisions for obtaining associated transmission

rights for delivery of the unit's electrical energy from the unit to the ISO-NE Control Area using transmission capacity with a commercial operation date after December 31, 2016. The generation unit owner or operator shall pay for evaluation and verification of the provisions of such documentation by an independent party that is engaged or approved by the Department.

2. The generation unit owner or operator shall provide documentation using a form provided by the Department or DOER, that:

- a. The electrical energy delivered pursuant to the legal obligation was settled in the ISO-NE Settlement Market System;
- b. The generation unit produced, during each hour of the applicable month, the amount of MWh claimed, as verified by the NEPOOL GIS administrator; if the originating control area employs a generation information system that is comparable to the NEPOOL GIS, information from that system may be used to support such documentation;
- c. The electrical energy delivered under the legal obligation received a NERC tag confirming transmission from the adjacent control area to the ISO-NE control area using transmission capacity with a commercial operation date after December 31, 2016; and
- d. The clean generation attributes have not otherwise been, nor will be, sold, retired, claimed, used or represented as part of electrical energy output or sales, or used to satisfy obligations in jurisdictions other than Massachusetts.

3. The generation unit owner or operator must provide an attestation in a form approved by the Department that it will not itself or through any affiliate or other contracted party, knowingly engage in the process of importing clean generation into the ISO-NE control area for the creation of clean GIS certificates, and then exporting that energy or a similar quantity of other energy out of the ISO-NE control area during the same hour.

4. The quantity of electrical energy output from a clean generation unit outside the ISO-NE control area that can qualify as clean generation at the NEPOOL GIS during each hour is limited to the lesser of the clean generation actually produced by the unit or the clean generation actually scheduled and delivered into the ISO-NE control area.

5. For the purpose of determining compliance with 310 CMR 7.75(7)(b) and all other provisions of 310 CMR 7.75, a clean generation unit that delivers clean energy into the ISO-NE control area or an adjacent control area through a dedicated transmission line shall be considered to be located in the control area to which the clean energy is delivered.

(8) Qualification Process for Clean Energy Generation Units.

(a) CES Statement of Qualification Application. For clean generation units that have not received an RPS statement of qualification, a CES statement of qualification application shall be submitted to the Department by the owner or operator of the generation unit. The applicant must use the most current forms and associated instructions provided by the Department, and must include all information, documentation, and assurances required by such forms and instructions.

(b) Review Procedures.

1. The Department ~~will~~shall notify the applicant when the CES statement of qualification application is administratively complete or if additional information is required pursuant to 310 CMR 7.75(8)(a).
2. The Department may, in its sole discretion, provide an opportunity for public comment on any CES statement of qualification application.

(c) Issuance or Non-~~Issuance~~issuance of a CES Statement of Qualification.

1. If the Department finds that all or a portion of the electrical energy output of a generation unit meets the requirements for eligibility as clean generation pursuant to 310 CMR 7.75(7)(a), and the generation unit is not eligible to receive an RPS statement of qualification from DOER, the Department ~~will~~shall provide the owner or operator of such unit with a CES statement of qualification.
2. The CES statement of qualification shall include any applicable restrictions and conditions that the Department deems necessary to ensure compliance by a particular generation unit with the provisions of 310 CMR 7.75.
3. If the generation unit does not meet the requirements for eligibility as a clean generation unit, the Department shall provide written notice to the Owner or Operator, including the Department's reasons for such finding.

(d) Notification Requirements for Change in Eligibility Status. The owner or operator of a clean generation unit shall notify the Department of any changes in the technology, operation, emissions, fuel sources, energy resources, capacity commitment, or other characteristics of the generation unit that may affect the eligibility of the unit as a clean generation unit. The owner or operator shall submit the notification to the Department no later than five days following the end of the month during which such changes were implemented. The notice shall state the date the changes were made to the clean generation unit and describe the changes in sufficient detail to enable the Department to determine if a change in eligibility is warranted.

(e) Notification Requirements for Change in Ownership, Generation Capacity, or Contact Information. The owner or operator of a clean generation unit shall notify the Department of any changes in the ownership, operating entity, generation capacity, NEPOOL GIS account, independent verification system for the unit's electrical energy output, or contact information for the generation unit. The owner or operator shall submit the notification to the Department no later than five days following the end of the month during which such changes were implemented.

(f) Time Limit for Project Implementation. Any CES statement of qualification shall expire 48 months after the issuance date of the CES statement of qualification (the expiration date) unless the commercial operation date of the generation unit is on or before the expiration date. The Department may, at its discretion, grant an extension of the expiration date of the CES statement of qualification upon petition by the owner or operator of the generation unit. If the owner or operator of such unit desires an extension, such owner or operator must submit a new CES statement of qualification application, and the decision of the Department on such new application may be made in accordance with the regulations and criteria that are applicable on the date that the Department receives that application.

(g) Suspension or Revocation of CES Statement of Qualification. The Department may suspend or revoke a CES statement of qualification if the owner or operator of a clean

generation unit fails to comply with 310 CMR 7.75.

(h) Identification of Clean Generation Units. The Department shall inform the NEPOOL GIS administrator which generation units should be designated clean generation units pursuant to 310 CMR 7.75.

(9) Reporting Requirements.

(a) Certification. Any person required by 310 CMR 7.75 to submit documentation to the Department shall provide:

1. The person's name, title and business address;
2. The person's authority to certify and submit the documentation to the Department; and
3. The following certification: "I hereby certify, under the pains and penalties of perjury, that I have personally examined and am familiar with the information submitted herein and, based upon my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties, both civil and criminal, for submitting false information, including possible fines and imprisonment."

(b) Annual Clean Energy Resource Report. The Department shall produce and make available to the public an annual report that summarizes information submitted to the Department by retail ~~electric~~-sellers subject to 310 CMR 7.75(4) in the annual compliance filings submitted to the Department pursuant to 310 CMR 7.75(6)(b). Such report shall include non-confidential data that provides the following:

1. The extent to which the retail ~~electric~~-sellers complied with the minimum clean energy standard, both separately and combined;
2. The extent to which the retail ~~electric~~-sellers used standard compliance, banked compliance, and alternative compliance, in meeting the minimum standards; and
3. The names, locations, and types of clean generation from which the retail ~~electric~~-sellers, as an aggregate, obtained the clean energy attributes used in meeting the minimum standards.

(c) Greenhouse Gas Emissions Reporting.

1. Each retail seller ~~of electricity~~ shall report annually to the Department its ~~megawatt hours~~ MWh sold and associated greenhouse gas emissions. The first required reporting year for retail sellers which are new competitive suppliers is the first year after 2017 in which they sell electricity in Massachusetts. Biogenic and non-biogenic greenhouse gas emissions shall be reported separately. This report shall be on a form provided by the Department.

2. Deadlines.

- a. Beginning with 2018 calendar year generation, retail sellers subject to 310 CMR 7.75(4) shall report the MWh required in 310 CMR 7.75(9)(c)4.a., ~~b. and~~ through c. on a form provided by the Department no later than the first day of July after the calendar year in which the ~~megawatt hours~~ MWh were generated.
- b. Beginning with 2018 calendar year emissions, the annual GHG emissions report shall be submitted no later than the ~~fifteenth~~ 15th day of the second September following each calendar year. The report shall be

submitted using the final annual emission factors provided by the Department for the purpose of calculating greenhouse gas emissions pursuant to 310 CMR 7.75(9)(c)3.

c. In order to finalize the annual biogenic and non-biogenic emission factors, the Department shall:

- i. post draft annual emission factors, including methodologies and data sources, on its website for public comment for 30 days and notify retail sellers of the posting and ~~of~~ the deadline for submittal of public comment; and,
- ii. post final annual emission factors, including methodologies and data sources, on its website.

d. Beginning with 2018 calendar year generation, MEDs and MLBs choosing to report under 310 CMR 7.75(9)(c)5.b. and c. shall submit those reports on a form provided by the Department no later than the first day of July after the calendar year in which the MWh were generated.

3. For the report required in 310 CMR 7.75(9)(c)2.b., all retail sellers shall use the following formula to calculate greenhouse gas emissions:

$GHG = (EF * MWh / 2000 \text{ pounds per short ton}) + \text{emissions reported in 310 CMR 7.75(9)(c)4-e 6.}$

Where:

GHG = Short tons of greenhouse gases (in carbon dioxide equivalents) associated with electricity sold in MA in a particular calendar year.

EF = Emission factors supplied by the Department each year for biogenic and non-biogenic greenhouse gas emissions (pounds carbon dioxide equivalents per ~~megawatt hour~~ MWh).

MWh = Annual electricity consumed by customers in a particular calendar year, increased to account for the portion of electricity lost during transmission and distribution (line losses), as reported pursuant to 310 CMR 7.75(6)(b)1. or 310 CMR 7.75(9)(c)5.a., less the sum of certificates reported pursuant to 310 CMR 7.75(9)(c)4.b. ~~through d and c. or MWh reported pursuant to 310 CMR 7.75(9)(c)5.b. and c.~~

4. Source of Megawatt Hour and Emissions Data: for retail sellers subject to 310 CMR 7.75(4).

a. In calculating biogenic and non-biogenic greenhouse gas emissions, retail sellers shall report the same number of ~~megawatt hours~~ MWh used to calculate any CES certificates obligation under 310 CMR 7.75(6)(b)1., inclusive of line losses.

b. Retail sellers shall report, by fuel and by state or province, the number of emitting and non-emitting ~~megawatt hours~~ MWh of electricity generated by emitting and non-emitting electricity generators represented by GIS renewable energy certificates or clean energy certificates retired in such seller's ~~New England Power Pool Generation Information System~~ NEPOOL GIS Massachusetts Retail Subaccount, as defined in the ~~New England Power Pool Generation Information System~~ NEPOOL GIS Operating Rules.

c. If the number of GIS certificates retired in a retail seller's ~~New England~~

~~Power Pool Generation Information System~~ NEPOOL GIS Massachusetts Retail Subaccount and reported pursuant to 310 CMR 7.75(9)(c)4.b. are greater than the ~~megawatt hours~~ MWh reported pursuant to 310 CMR 7.75(9)(c)4.a., the retail seller shall indicate, on the 310 CMR 7.75(9)(c)4.b. report, which certificates will be excluded from GHG reporting so that the number of certificates does not exceed the ~~megawatt hours~~ MWh reported.

~~d. Nuclear certificates included on the report required by 310 CMR 7.75(9)(c)4.b. shall be excluded from GHG reporting except for municipal electric departments and municipal light boards complying with 310 CMR 7.75(4)(b)2.~~

e 5. Source of Megawatt Hour and Emissions Data for retail sellers that are MEDs or MLBs.

a. In calculating biogenic and non-biogenic greenhouse gas emissions, MEDs and MLBs shall use the same number of MWh reported in the annual return to the Department of Public Utilities, inclusive of line losses.

b. Optional MED and MLB Reporting of Non-emitting Electricity. MEDs and MLBs may choose to subtract any MWh of electricity generated by non-emitting electricity generators from the amount of MWh reported in 310 CMR 7.75(9)(c)5.a., if such non-emitting MWh are reported in the annual report due under 310 CMR 7.75(9)(c)1., and provided the following criteria are met:

i. the MED or MLB reports MWh by fuel and by state or province;

ii. the MED or MLB provides information from the NEPOOL GIS showing that the certificates associated with the non-emitting MWh of electricity were unsettled certificates whose attributes were aggregated in residual mix certificates, both as defined in the NEPOOL GIS Operating Rules; and

iii. for non-emitting electricity generators not owned by the MED or MLB, the MED or MLB provides a copy of the contract or contracts establishing that it has purchased electricity from such non-emitting electricity generators and reports such MWh.

c. Optional MED and MLB Reporting of Emitting Electricity. MEDs and MLBs may choose to report calculations of biogenic and non-biogenic greenhouse gas emissions, based on the methodology provided in 310 CMR 7.75(9)(c)6., if such emitting MWh are reported in the annual report due under 310 CMR 7.75(9)(c)1., and provided the following criteria are met:

i. the MED or MLB reports MWh by fuel and by state or province;

ii. the MED or MLB provides information from the NEPOOL GIS showing that the certificates associated with the emitting MWh of electricity were unsettled certificates whose attributes were aggregated in residual mix certificates, both as defined in the NEPOOL GIS Operating Rules; and

iii. for emitting electricity generators not owned by the MED or MLB, the MED or MLB provides a copy of the contract or

contracts establishing that the MED or MLB has purchased electricity from such emitting electricity generators.

d. The total of all optional non-emitting and emitting MWh reported under 310 CMR 7.75(9)(c)5.b. and c. shall not be greater than the MWh reported in 310 CMR 7.75(9)(c)5.a.

6. Carbon dioxide, methane and nitrous oxide emissions from any emitting electricity generator shall be reported as follows:

$$\text{GHG}_i = (\text{EF}_i * \text{MWh}_i / 2000 \text{ pounds per short ton})$$

Where:

GHG_i = Short tons of greenhouse gases for each emitting fuel type i (in carbon dioxide equivalents) associated with electricity sold in MA in a particular calendar year.

EF_i = Emission factors supplied by the Department each year for biogenic and non-biogenic greenhouse gas emissions for each emitting fuel type i (pounds carbon dioxide equivalents per ~~megawatt-hour~~ MWh).

MWh_i = as reported for fuel type i pursuant to 310 CMR 7.75(9)(c)4.b.

(d) The Department may specify the format and process by which any submission required pursuant to 310 CMR 7.75 shall occur, including electronic submission requirements.

(10) Not later than December 31, 2017, the Department shall complete a review, including an opportunity for public comment, of options for including generators that meet all requirements of 310 CMR 7.75, except for the commercial operation date requirements in 310 CMR 7.75 (7)(a)2. and (b)1., in the clean energy standard. This review shall also examine options for including annual standards for MEDs and MLBs in the clean energy standard.

(11) Not later than December 31, 2021, the Department shall complete a review, including an opportunity for public comment on the program review, of the requirements of 310 CMR 7.75 to determine whether the program should be amended. This review shall evaluate projected clean energy credit supply and costs, and any other information relevant to review of the program.

(12) Inspection and Record Retention.

(a) Document Inspection. The Department may audit the accuracy of all information submitted pursuant to 310 CMR 7.75. The Department may request and obtain from any owner, operator or authorized agent of a clean generation unit, and from any retail seller, information that the Department determines necessary to monitor compliance with and enforcement of 310 CMR 7.75.

(b) Audit and Site Inspection. Upon reasonable notice to a retail seller or to a clean generation unit owner, operator or authorized agent, the Department may conduct audits, which may include inspection and copying of records and/or site visits to a clean energy generation unit, or a retail seller's facilities, including, but not limited to, all files and documents that the Department determines are related to compliance with 310 CMR 7.75.

(c) Record Retention. All documentation used to comply with any provision of 310 CMR 7.75 shall be retained for five years and provided to the Department electronically or in hard copy as requested by the Department.

(1213) Enforcement.

(a) If a retail seller ~~doesthat is~~ not ~~comply with the requirements of 310 CMR 7.75(4)(a) and 7.75(5)an MED or a municipal electric department or municipal light board~~MLB does not comply with the requirements of 310 CMR 7.75(4)(a), (b) and 7.75(5), then such retail seller ~~or such municipal electric department or municipal light board~~ shall be deemed to have caused air pollutant emissions releases to the environment without the approval or authorization of the department.

(b) The requirements of 310 CMR 7.75 ~~will~~shall be enforced in accordance with applicable federal and Massachusetts law, including but not limited to, the issuance of an administrative order or civil administrative penalties pursuant to M.G.L. c. 21A, §16~~and~~, 310 CMR 5.00: Administrative Penalty, M.G.L. c. 111, §§ 142A through 142M, M.G.L. c. 111, §2C, and M.G.L. c. 21N, § 7(d).

Amend 310 CMR 7.71(9)(b)2. by adding the underlined text below

2. Beginning with 2010 calendar year emissions, the annual report shall be submitted by the first day of the next month that is a full calendar month after the Department posts on its website the final annual emission factors listed in 310 CMR 7.71(9)(c). The 2017 calendar year emissions shall be the last annual report submitted under ~~this regulation~~310 CMR 7.71. The 2017 calendar year megawatt hour data, submitted by July 1, 2018, under the optional reporting ~~sections in 310 CMR 7.71(9)(d)3. through (9)(d)6.,~~ shall be the last optional reporting of megawatt hour data under ~~this regulation~~310 CMR 7.71.