



April 1, 2022

Mr. John Wassam  
Massachusetts Department of Energy Resources  
100 Cambridge Street, Suite 1020  
Boston, MA 02114

**RE: 2022 RPS Class I & II Rulemaking - NRG Energy, Inc. Comments**

Dear Mr. Wassam:

In response to the Massachusetts Department of Energy Resources (“DOER or Department”) notice for written comments regarding 2022 RPS Class I & II Rulemaking proceeding, NRG Energy, Inc.<sup>1</sup> (“NRG”) hereby submits these comments to assist the Department in this important rulemaking proceeding.

**BACKGROUND**

DOER announced last year a phased rulemaking for the Renewable Energy Portfolio Standard regulations, 225 CMR 14.00: Renewable Energy Portfolio Standard - Class I (“RPS Class I”), and 225 CMR 15.00: Renewable Energy Portfolio Standard - Class II (“RPS Class II”). The Phase 1 changes were finalized on July 9, 2021.

The Massachusetts Secretary of State has taken the position that in order to publish the proposed biomass changes (“Phase 2 changes”), a new rulemaking process was necessary. Thus, the Phase II RPS Class I and RPS Class II regulations were not finalized with the Secretary of State in November 2021.

Accordingly, DOER has instituted a new rulemaking process to implement these changes. Additionally, DOER has determined that additional changes to 225 CMR 14.00: Renewable Energy Portfolio Standard - Class I are necessary to address policy related changes and changes required to implement Section 32 of Chapter 8 of the Acts of 2021. These

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<sup>1</sup> NRG Energy Inc. is a Fortune 500 company, one of America’s leading integrated energy companies with 15,000 MW of generation in our portfolio and with over six million retail electricity customers in the U.S. and Canada. NRG delivers customer-focused solutions for managing electricity, while enhancing energy choice and working towards a sustainable energy future. In the Commonwealth of Massachusetts, NRG provides retail electricity and related services to a significant number of residential and non-residential customers through its brand affiliates Direct Energy Business, LLC; Direct Energy Business Marketing, LLC; Direct Energy Services, Energy Plus Holdings, LLC, LLC; Reliant Energy Northeast, LLC; Green Mountain Energy, Inc. and XOOM Energy Massachusetts, LLC, which are registered Competitive Retail Electricity Suppliers with the Department of Public Utilities.

additional changes will, along with the Phase 2 changes to the RPS regulations, be part of a consolidated rulemaking proceeding. Acting under statutory authority of Section 11 F and 11 F1/2 and in conformance with Chapter 30A of the General Laws, proposed draft regulations have been filed with the Secretary of State.

DOER has stated that it has retained all previously proposed changes that were subject to the Phase 2 process undertaken in 2021. All previously filed public comments on these proposed changes will become part of the record of this new rulemaking and need not be resubmitted in order to be considered. In addition to these previously proposed changes, DOER has proposed new changes that are summarized below:

#### RPS Class I

The proposed changes to RPS Class I include:

1. Woody Biomass: DOER proposes a further amendment that exempts Generation Units that meet all other applicable requirements and have a Commercial Operation Date prior to January 1, 2022 from the proposed Environmental Justice requirements in 14.05(1)(a)7. e.
2. Minimum Standard Revisions: DOER amends Section 14.07(1) to increase the Minimum Standard from 2% per year to 3% per year for the years 2025 to 2029, to reflect the changes of Section 32 of Chapter 8 of the Acts of 2021.

### COMMENTS

NRG provides these written comments related to Category C. - Minimum Standard Revisions pertaining to the Department's proposed 2022 RPS Class I & II Rulemaking proceeding.

Retail electricity suppliers operate in a highly dynamic market environment that compels them to compete and provide their customers, especially the commercial, industrial and institutional market segments, with innovative pricing options and complex contractual products that oftentimes includes terms for periods of three to five years in duration. Over the course of these extended terms of service periods, retail electricity suppliers like NRG require regulatory certainty and predictability in order to effectively provide customers with accurate and transparent pricing necessary to fulfill on their contractual agreements.

Therefore, as the DOER has proposed the Minimum Standard Revisions that seeks to amend Section 14.07(1) to increase the Minimum Standard from 2% per year to 3% per year for the years 2025 to 2029, it would prove to be highly disruptive to existing customer contracts that have not factored in the incremental RPS costs resulting from the proposed change. Furthermore, when the customer entered into its retail electricity supply agreement(s), the proposed increase to the Minimum Standard was not anticipated and thus, was not included in the price.

As a result, competitive retail suppliers may be required to reluctantly pass these new and incremental costs along to their existing customers. Accordingly, NRG urges the Department to consider the financial impact of the unanticipated RPS regulatory change and resulting costs on these affected customers, especially commercial, industrial and institutional accounts. Many of these customers include commercial business enterprises, state and municipal government facilities, hospitals and related health facilities, and institutions of higher education.

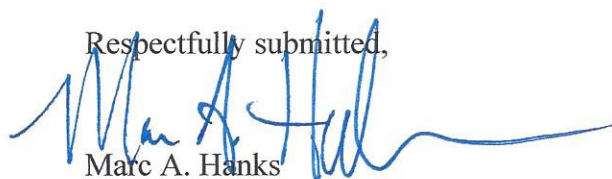
As reflected in the CMR 15. Renewable Portfolio Standards - Class II, Section 15.09 - Annual Compliance Filings for Retail Electricity Suppliers, 2. Contents of Annual Compliance Filing (g) rules<sup>2</sup>, the Department established an important and beneficial precedent related to a compliance exemption provision. Accordingly, NRG encourages the Department to establish a similar exemption provision exclusively applicable to existing customer contracts if the proposed DOER's Minimum Standard Revisions reflected in the proposed 2022 RPS Class I rules go into effect, i.e., the RPS Effective Date. Specifically, those existing customer contracts signed on or before the RPS Effective Date would be "grandfathered" or exempt from the proposed change to the Minimum Standard Revisions. We believe this important exemption provision will safeguard the Commonwealth's electricity consumers from the unexpected financial impact of the proposed 2% per year to 3% per year increase for the years 2025 to 2029. NRG believes that this subset of customers should not be penalized or burdened with the incremental RPS costs until such time as their existing contract terminates and is subject to renewal.

Finally, retail electricity suppliers would be required to provide sufficient evidence to the Department properly documenting the existing customer contract would indeed qualify for the exemption on an annual basis.

## CONCLUSION

On behalf of NRG, I wish to thank the Department for the opportunity to provide these written comments.

Respectfully submitted,



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Director, Regulatory Affairs

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<sup>2</sup> (g) Exempt Contracts under the RPS Class II Renewable Generation Minimum Standard and the RPS Class II Waste Energy Minimum Standard. Identification of any contract for a specific term of years that was executed before January 1, 2009, and its terms including but not limited to, the execution and expiration dates of the contract and the annual volume of electrical energy supplied