

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF ENERGY RESOURCES

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2024 CLEAN PEAK ENERGY STANDARD REVIEW	:	MAY 3, 2024
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**COMMENTS OF
RETAIL ENERGY SUPPLY ASSOCIATION
RE STAKEHOLDER QUESTIONS**

The Retail Energy Supply Association (“RESA”)¹ hereby submits its comments in response to the Department of Energy Resources’ (“DOER”) 2024 Clean Peak Energy Standard Review Stakeholder Questions regarding potential amendments to the Clean Peak Energy Standard, 225 CMR 21.00 (“CPS”).²

INTRODUCTION

RESA is a non-profit organization and trade association whose members are active participants in the retail competitive markets for electricity, including the Massachusetts retail electric market. Several RESA member companies are licensed by the Department of Public Utilities to serve residential, commercial and industrial customers in Massachusetts and are presently providing electricity service to customers in the Commonwealth. As such, RESA has an interest in ensuring that any changes to the CPS do not have an adverse effect on RESA

¹ The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

² See generally, 2024 Clean Peak Energy Standard Review Stakeholder Questions, (Mar. 25, 2024) (“Stakeholder Questions”).

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

BACKGROUND

In 2018, Massachusetts Governor Baker signed into law An Act to Advance Clean Energy directing DOER to develop a program that would require retail electric providers to meet a baseline minimum percentage of sales with qualified clean peak resources that dispatch or discharge electricity to the electric distribution system during seasonal peak periods, or alternatively, reduce load on the system. The final regulation implementing the CPS became effective in August 2020.³

Beginning in 2024, and not less than every four years thereafter, DOER is required to conduct a review of the Clean Peak Energy Certificate Multipliers (“CPS Multipliers”), Minimum Standard and Alternative Compliance Payment (“ACP”) Rate (“CPS Review”).⁴ To inform the 2024 CPS Review, on March 25, 2024, DOER issued the Stakeholder Questions.⁵ RESA now hereby submits its comments in response to the Stakeholder Questions.

COMMENTS

In the Stakeholder Question, DOER requests input on potential modifications to the “CPS Multipliers, Minimum Standard, ACP Rate, and Seasonal Peak Periods as currently set forth in 225 CMR 21.00.”⁶ RESA understands DOER’s desire to modify the CPS to assist the Commonwealth in meeting its 2050 climate goals by increasing clean energy during periods when demand is at its highest.⁷ However, to avoid unexpected and potentially significant price

³ See generally, 225 CMR 21.00.

⁴ 225 CMR 21.05(6)(h); 225 CMR 21.07(3)(b)(3); 225 CMR 21.08(3)(a)(5).

⁵ See Stakeholder Questions.

⁶ Stakeholder Question 8.

⁷ See 225 CMR 21.01; Stakeholder Question 1.

increases, any proposed changes should be implemented in a way that protects existing customers' expectations.

When a new or modified obligation is imposed, it impacts existing customer agreements that were priced based on existing obligations and may have a term of service that extends over multiple years. As of December 31, 2023, nearly 1.8 million Massachusetts customers were served by competitive suppliers.⁸ Moreover, the competitive electricity market in the Commonwealth continues to advance and competitive suppliers continue to enter into contractual obligations, often with multi-year terms of service.⁹ However, competitive suppliers do not take market positions or enter into agreement terms with customers based simply on the announcement that a regulatory change may occur or even based on the release of proposed regulatory revisions. Rather, since announced or even proposed regulatory revisions are subject to change based on the stakeholder input process,¹⁰ competitive suppliers take market positions and enter into agreements based only on the actual program requirements that are officially adopted. By contracting based on officially promulgated regulations, customers are not exposed to undesirable contracting arrangements, unnecessary price increases and/or pricing volatility as a result of speculative regulatory changes that may never be adopted or that may be significantly modified through the regulatory or stakeholder process before such changes ultimately become effective. As a consequence, only after the DOER officially promulgates any amendments to the CPS will suppliers modify their market positions and/or the terms of their agreements with customers to account for any new or modified obligations or requirements.

⁸ 2023 Monthly Electric Customer Migration Data (available at: <https://www.mass.gov/doc/2023-monthly-electric-customer-migration-data/download>) (last visited May 2, 2024).

⁹ See Energy Switch Massachusetts, <http://www.energyswitchma.gov> (displaying multiple fixed price offers that extend thirty-six (36) months into the future) (last visited May 2, 2024).

¹⁰ See, e.g., Clean Peak Energy Standard History of Program Development, <https://www.mass.gov/info-details/clean-peak-energy-standard-history-of-program-development> (last visited May 2, 2024).

When a new or modified obligation is imposed, it impacts existing contracts that were priced based on any prior obligation and may have a term of service that extends over multiple years. While competitive suppliers may have contractual and legal means to address change of law circumstances, these mechanisms are viewed by customers and suppliers as a last resort because they will have a direct and immediate financial effect on customers who have contracted for a fixed price and will be subject to new and unanticipated charges that are not within their budgets. These unanticipated charges could place customers in untenable positions because they may be required to pay these new costs per the terms of their contractual agreements. Such an unexpected cost impact would be particularly difficult for customers with limited budgetary flexibility. Moreover, such unexpected changes would undermine the consumers' underlying confidence that the competitive electricity market can provide and deliver the type of pricing, products, and risk management services they desire and have contracted to meet their energy needs.

Accordingly, RESA requests that, as it has in the past,¹¹ DOER create a compliance exemption from any new or modified obligations until the expiration of any contracts existing as of the effective date of any adopted CPS amendments. In this way, DOER can avoid exposing customers to unexpected and potentially significant price increases.

¹¹ See 225 CMR 21.07(1) ("The total annual sales of each Retail Electricity Product sold to Massachusetts End-use Customers by a Retail Electricity Supplier, under contracts executed or extended on or after January 1, 2020, shall include a minimum percentage of electrical energy sales with Clean Peak Certificates."); *see also* 225 CMR 14.07(2)(c); 225 CMR 14.07(3)(c); 225 CMR 14.09(2)(g); 225 CMR 15.07(1); 225 CMR 15.07(2); 225 CMR 16.07(1).

CONCLUSION

For all of the foregoing reasons, RESA requests that the DOER exempt existing customer contracts in effect prior to the effective date of any changes to the CPS.

Respectfully submitted,
RETAIL ENERGY SUPPLY ASSOCIATION

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