310 CMR 7.74: Reducing CO_2 Emissions from Electricity Generating Units
310 CMR 7.75: Clean Energy Standard (CES)
2021 Program Review Stakeholder Discussion Document

The Massachusetts Executive Office of Energy and Environmental Affairs (EEA) and the Massachusetts Department of Environmental Protection (MassDEP) promulgated 310 CMR 7.74 and 7.75 in 2017 to reduce electricity emissions and ensure compliance with the emissions limits of the Massachusetts Global Warming Solutions Act (GWSA).

Background information about 310 CMR 7.74 and 7.75 is available on MassDEP's web site (https://www.mass.gov/guides/clean-energy-standard-310-cmr-775; https://www.mass.gov/guides/electricity-generator-emissions-limits-310-cmr-774). Stakeholders unfamiliar with 310 CMR 7.74 and 7.75 should begin by reviewing the document titled "Fact Sheet: MassDEP Electricity Sector Regulations." Available information includes documents related to the origination rulemaking, and to amendments that were finalized in 2018 and 2020.

Each regulation includes a program review requirement:

- 310 CMR 7.74(11): *Not later than December 31, 2021 and every ten years thereafter, the Department shall complete a review, including an opportunity for public comment, of the requirements of 310 CMR 7.74 to determine whether the program should be amended. This review shall evaluate CO_2 emissions, costs, consistency with statewide CO_2 emissions limits established pursuant to M.G.L. c. 21N, and any other information relevant to review of the program.*

- 310 CMR 7.75(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.*

The purpose of this document is to assist stakeholders in providing public comment in accordance with these regulatory provisions. As a first step, **MassDEP is requesting comment on the scope of the review (as reflected in this document). Initial substantive comments are due by May 31, 2021. MassDEP will consider these comments in planning next steps, such as conducting topical stakeholder meetings, collecting or developing information relevant to review of the programs, developing draft regulatory language, etc. Comments and questions may be submitted by email to climate.strategies@mass.gov.**

Topic #1: Stringency of 310 CMR 7.74 and 7.75

310 CMR 7.74 and 7.75 include, for every year until 2050, numerical limits on CO_2 emissions from electric power plants located in Massachusetts (310 CMR 7.74) and minimum percentage standards for clean energy supplied to electricity consumers in Massachusetts (310 CMR 7.75). In December 2020, EEA published an "Interim Clean Energy and Climate Plan for 2030" ("Interim CECP") that includes the following excerpts that reference 310 CMR 7.74 and 7.75: [1]

- *To impact markets for new clean generating resources in 2030, the CES would need to be raised from 40% to at least 60%, to exceed the RPS and not be overtaken by the clean energy anticipated under the section 83D hydroelectric procurement.*
- *Raising the CES-E modestly may be a possibility because the standard was set conservatively, but the potential role of CES-E for this purpose is limited because it does not incentivize the development of the new clean regional resources that are needed to reduce emissions in the long-term.*
- *Tightening regulations on in-state generators (e.g., 310 CMR 7.74) has the potential to reduce emissions but requires thoughtful planning to ensure this potential is not offset by increases in imported electricity emissions.*

In March of this year, Governor Baker signed a new law, Senate Bill 9 - An Act Creating a Next Generation Roadmap for Massachusetts Climate Policy, which updates the GWSA to require additional greenhouse gas emission reductions by 2030, beyond those identified in the Interim CECP.[2] The amount of additional electricity sector reductions that will be required by 2030 is not yet known.

Consistent with the content of the Interim CECP and the new climate legislation, MassDEP suggests that stakeholders consider commenting on the following potential amendments to the regulations:

- **Increase the stringency of the CES from 40% to 60% or more in 2030.** For example, this could be addressed by increasing the standard by 5% or more each year from 2026 – 2030 (instead of the 2% each year increase in the current regulation). Waiting until 2025 before escalating the annual rate of increase would allow time for supply to become available before the changes take effect. In combination with the CES-E, these changes would place the Commonwealth on a path toward a fully decarbonized electricity sector by 2040.
- **Increase the CES-E from 20% of 2018 electricity sales to 25%.** An increase from 20% to 25% could "lock in" a modestly larger contribution from pre-2010 clean generators. Making this change by 2026 would help ensure that new clean generators added quickly between 2026 and 2030 replace emitting generators, not existing clean generators.

[1] https://www.mass.gov/info-details/massachusetts-clean-energy-and-climate-plan-for-2030
[2] https://www.mass.gov/news/governor-baker-signs-climate-legislation-to-reduce-greenhouse-gas-emissions-protect-environmental-justice-communities

- **Maintain the stringency of 310 CMR 7.74 without modification.** Emissions from the in-state power plants regulated under 310 CMR 7.74 have trended well below regulatory limits, so further reducing those limits may not be necessary to achieve reductions by 2030. However, even if the limits in 310 CMR 7.74 are not changed as a result of the 2021 program review, ongoing monitoring will continue to ensure that power plant emission levels support achieving the 2030 statewide greenhouse gas (GHG) emissions limit established in December 2020.

In commenting on these potential amendments, stakeholders are encouraged to address regulatory requirements to evaluate CO_2 emissions, consistency with statewide GHG emissions limits, projected clean energy credit supply, and costs. With regard to costs, stakeholders are encouraged to consider options for minimizing costs of the clean energy transition through 2050.

Stakeholders may also comment on the timing of any regulatory amendments that would affect the stringency of 310 CMR 7.74 or 7.75. Initiating rulemaking as soon as possible in 2021 may encourage the rapid action that will be necessary to achieve large emission reductions by 2030. On the other hand, amendments may be necessary to address the 2025 and 2030 CECPs that will be published by July 1, 2022, so delaying the rulemaking until after that date may make sense as a way to avoid the need to complete multiple rulemaking processes in the next two years.

Topic #2: Clean Energy Standard Technical Review

In addition to the overall stringency of the CES (Topic #1), MassDEP seeks input on the following CES-related topics, and encourages stakeholders to suggest other topics:

- A comprehensive "global" CES has been posited by some stakeholders as a substitute for, or complement to, the suite of RPS/APS/CES/CES-E policies that currently exist in Massachusetts and New England.[3] How, exactly, would such a policy be structured? For example, how would costs be minimized in a single policy given the need to support technologies with widely differing costs (i.e., new rooftop solar vs. pre-2010 hydropower facilities)?
- Are changes needed to the alternative compliance payment (ACP) rates? For example, the rates could be specified in regulation as $35/MWh for the CES and $10/MWh for the CES-E (similar to current levels), instead of as a % of the RPS Class I ACP rate.
- Should the structure of the standard be refined to address customer-sited behind-the-meter generation such as rooftop solar power? Under the current program structure, this generation may be credited toward compliance, but the portion of the energy used

[3] The response to comments document that was published when the CES regulation was amended in 2020 stated "Several commenters . . . expressed a preference for a "global CES" . . . EEA and MassDEP agree that there is value in considering options for simpler and more comprehensive approaches to clean energy crediting programs and will revisit this issue in the program review scheduled for 2021. "

on site is not included in the basis of the compliance obligation because it is never sold. For example, if this energy is estimated to account for 2% of total electricity consumption in the state in a year, this could be addressed by requiring retail electricity sellers to adjust their sales upward by 2% when calculating their CES compliance obligations. That way, in the year when the standard is 50%, there would be enough clean energy to cover 50% of total electricity consumption (vs. only retail sales) in Massachusetts.[4]

- Should there be any changes to the requirements that apply to generators that are not located in ISO-NE? For example, should the capacity market participation requirements or energy delivery documentation requirements be revised?[5]

Topic #3: 310 CMR 7.74 Technical Review

In addition to the overall stringency of 310 CMR 7.74 (Topic #1), MassDEP seeks input on the following 310 CMR 7.74-related topics, and encourages stakeholders to suggest other topics. Note that these topics are suggested because of their potential to mitigate allowance market liquidity issues that have been identified by the market monitor.[6]

- Should there be limits on allowance banking? Limiting allowance banking could increase liquidity, at least in the near term, because facilities would likely attempt to sell allowances that could not be banked.
- Should some allowances be offered for sale at auction well in advance of each compliance year? For example, vintage 2023 allowances could be sold over eight quarterly auctions beginning in December 2021. Making vintage 2023 allowances available earlier would facilitate future price discovery and could increase liquidity because there would be less need for facilities to obtain and bank excess vintage 2022 allowances to hedge against 2023 compliance obligations. (The same schedule would be implemented for each subsequent compliance year.)
- Should auction bid limits be adjusted? For example, facility-specific bid limits, which are authorized by 310 CMR 7.74(6)(h)1.g., could be utilized.[7]

[4] The current approach has been compared to "double counting." See http://www.energy.ri.gov/documents/renewable/RI%20100%20Percent%20Project%20-%20Public%20Workshop%202%20-%20Sept%2029.pdf , slide 24, and https://portal.ct.gov/-/media/DEEP/energy/IRP/2020-IRP/2020-CT-DEEP-Draft-Integrated-Resources-Plan-in-Accordance-with-CGS-16a-3a.pdf , p. 95.

[5] Information about amendments to corresponding RPS requirements is available at https://www.mass.gov/service-details/rps-class-i-ii-rulemaking.

[6] Market monitor reports are available on the 310 CMR 7.74 program web page.

[7] The response to comments document that was published when 310 CMR 7.74 was amended in 2018 stated "EEA and MassDEP, in consultation with the market monitor, will monitor the allowance market, and are prepared to utilize their authority to set bid limits to address issues that may arise. . ."

Topic #4: Municipal Light Plants (MLPs) and 310 CMR 7.75

MLPs are required to report greenhouse gas emissions under 310 CMR 7.75. Under the new climate legislation referenced above, each MLP is required to establish a greenhouse gas emissions standard (GGES). EEA and MassDEP seek stakeholder input on the following question related to the GGES requirements:

- Are any clarifications necessary in relation to the GHG reporting requirements under 310 CMR 7.75? For example, is there a need to clarify that the prohibition on reporting non-emitting generation for which others own the emissions attributes will continue to apply regardless of how MLPs structure their GGES programs?