



Commonwealth of Massachusetts  
Executive Office of Energy & Environmental Affairs

# Department of Environmental Protection

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## **Response to Comment on Amendments to:**

### ***310 CMR 7.75 Clean Energy Standard***

**July, 2020**

## **Regulatory Authority:**

**M.G.L. c. 21A, §§ 2, 8, and 16**

**M.G.L. c. 21N, §§ 2(a)(5), 3(c), 4, and 7 and**

**M.G.L. c. 111, §§ 2C and 142A – 142E**

## Background and Purpose

In August 2017, the Executive Office of Energy and Environmental Affairs (EEA) and the Massachusetts Department of Environmental Protection (MassDEP) finalized 310 CMR 7.75: *Clean Energy Standard* (CES) to require retail sellers of electricity to provide increasing quantities of clean electricity to their customers in Massachusetts. The standard is defined as a percentage of electricity sales and increases from 16% in 2018 to 80% in 2050, increasing by 2% each year. The CES includes specific eligibility requirements, including an emissions-based qualification threshold and a requirement that eligible generators must have commenced commercial operation after 2010.

The CES also required MassDEP to complete a review in 2017 of options for addressing clean generators that were in operation before 2011 (referred to in this document as “existing”). Issues addressed in the review were documented in a discussion document and extensive written stakeholder comments. Comments received during the review informed regulatory amendments that were finalized in December 2017 to ensure that clean energy contracted pursuant to Chapter 188 of the Acts of 2016, *An Act to Promote Energy Diversity* is eligible for the CES. In early 2019, MassDEP released a second discussion document, which included a detailed discussion of how to expand the CES to address existing generators and consideration of increasing the CES standard in 2020 and 2021. This second stakeholder process, including a stakeholder meeting and written comments, was completed in early 2019, and informed development of the regulatory amendments proposed in October 2019 and being finalized at this time. Both discussion documents and all stakeholder comments are available on MassDEP’s CES website at: <https://www.mass.gov/guides/clean-energy-standard-310-cmr-775>.

The final amended regulation addresses the role of existing clean generators in reducing emissions and places the Commonwealth on a path toward a fully decarbonized electricity sector in 2050.

## Public Comment Process

EEA and MassDEP held two public hearings and solicited oral and written comments on the proposed amendments to 310 CMR 7.75 in accordance with M.G.L. Chapter 30A. On October 9, 2019, EEA and MassDEP published in two newspapers, the Boston Globe and the Worcester Telegram & Gazette, notice of the public hearing and public comment period on the proposed amendments. The public hearing notice was also published in the Massachusetts Register on October 4, 2019, and interested parties were notified via electronic mail. The public hearings were held at MassDEP’s Boston office on October 30, 2019 and MassDEP’s Central Regional office in Worcester on October 31, 2019. The public comment period closed on November 12, 2019. A list of commenters is included at the end of this Response to Comments document. A Technical Support Document was published on the website referenced above to provide commenters with detailed information about the rationale for the proposed amendments and other relevant background information.

## Comments and Responses

**Comment:** Commenters that addressed the proposed increase in the 2020 CES standard from 20% to 22% all expressed opposition to the proposed increase (AIM, National Grid, Calpine/Vistra, Harvard, TEC). One of the commenters opposed to increasing the standard pointed out that additional costs would result if increased demand for certificates raises the market price of all certificates necessary to comply with the 22% standard (National Grid). Another commenter noted that the proposal could result in alternative compliance payments (AIM). An additional commenter submitted a graph showing that the market price of certificates needed to comply with the increased standard has tripled since the increase was first discussed with stakeholders in early 2019, with the most rapid increases occurring in the September – October time frame (Eversource). This commenter estimated that the total cost of obtaining the additional certificates necessary to comply with the 2% increase in the standard would be \$50 million.

**Response:** The final regulation does not include any change in the 2020 CES standard of 20%. EEA and MassDEP agree with the commenters that market conditions have changed, and no longer support increasing the standard in 2020. In reaching this conclusion, EEA and MassDEP engaged expert consultants to verify the analysis provided by the commenters. EEA and MassDEP also considered the fact that emissions from electricity generators located in Massachusetts fell significantly in 2018 and 2019, suggesting that an increase in the 2020 standard is not necessary to address electricity emissions in 2020.

**Comment:** Most commenters expressed support for the CES-E concept, citing the importance of pre-2011 clean generators for meeting emission reduction goals (AIM, HQ, NextEra, CT DEEP, National Grid, RENEW, Brookfield). Commenters opposed to the CES-E cited the potential for a more comprehensive regional solution (CLF), and claimed that the CES-E would provide unnecessary revenue to existing generators and would not reduce emissions (Calpine/Vistra, TEC). Several commenters that support the CES-E expressed a preference for a “global CES” that would combine the CES and CES-E, potentially along with other state renewable energy programs (AIM, Brookfield, National Grid).

**Response:** EEA and MassDEP are finalizing the CES-E, with modifications described below. Regarding the prospect of a comprehensive regional solution, the Connecticut Department of Energy and Environmental Protection concurred with EEA and MassDEP’s assessment that the CES-E can be a “useful step toward a more comprehensive and regionally-coordinated effort.” Regarding emissions reductions, EEA and MassDEP note that the stated purpose of the CES-E is to “lock-in” the contribution of existing resources, not reduce emissions from current levels. 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.

**Comment:** Two commenters estimated that the maximum annual cost of complying with the 15% CES-E standard would be approximately \$70 million per year (Eversource, National Grid).

**Response:** MassDEP concurs with this estimate, which is derived by multiplying the proposed number of megawatt hours (MWh) of electricity sales covered by the CES-E by the proposed alternative compliance payment (ACP) price, and is equal to approximately 1% of annual retail electricity sales by retail electricity sellers. However, EEA and MassDEP note that this is a maximum price, and that the price for some CES-E certificates could be lower because of competition among clean energy generators. See below for discussion of changes to the final regulation that will tend to lower compliance costs compared to the proposal. Another factor not considered by these commenters is the “grandfathering” of pre-October 4, 2019 contracts, also discussed below, which will further reduce the costs of the program in the first few years of implementation.

**Comment:** Several commenters suggested changes to the proposed percentage CES-E standard of 15% of current electricity sales, and the ACP level of 15% of the Renewable Portfolio Standard (RPS) Class I ACP level. Commenters that expressed support for increasing the CES-E standard to 20% or more of current electricity sales noted that a higher standard would better reflect the historical contribution of existing resources (Brookfield, National Grid, BSHA, TMLP). The only commenter opposed to increasing the standard cited concern about costs in their comments (Eversource), but one of the commenters that supported increasing the standard noted that potential cost impacts could be mitigated if the ACP level were reduced (National Grid). One commenter that supported increased stringency also noted that it “is likely that it will be more cost-effective to maintain existing operational units than to build new units” (National Grid).

**Response:** The final CES-E amendments include a standard of 20% of current electricity sales and an ACP option of 10% of the RPS Class I ACP level. In addition to the reasoning provided by commenters, EEA and MassDEP note that increasing the standard is consistent with changes in eligibility that increase the amount of clean energy available for use in complying with the CES-E, discussed below. EEA and MassDEP also concur with the suggestion that reducing the ACP level is appropriate to ensure that increasing the standard does not lead to increased costs relative to the proposal. The combined effect of increasing the stringency from 15% to 20% and reducing the ACP level from 15% to 10% of the RPS Class I level is to moderately reduce the maximum potential cost of the program, which was estimated at approximately 1% of electricity bills when the amendments were proposed, an estimate that MassDEP has since verified with the assistance of expert consultants. EEA and MassDEP also concur that supporting existing resources may lower costs in the long run by avoiding the cost of replacement generation, a benefit that was not quantified in the cost estimate.

**Comment:** In the Background Document that was published with the proposed regulation, EEA and MassDEP requested comment on several options for broadening the eligibility criteria for clean energy generators. Specifically, EEA and MassDEP presented alternative eligibility criteria that would recognize Connecticut as an eligible exporting jurisdiction, an option that was supported by several commenters (CT DEEP, MMWEC, National Grid). Similarly, adding the Canadian provinces of Labrador and Newfoundland was supported by several commenters, citing the potential to reduce costs by increasing competition among clean generators in Canada (Nalcor, Eversource, TMLP). Commenters were divided on the question of whether small hydroelectric generators should be included. One commenter described the proposed exclusion

of hydroelectric generators smaller than 30 MW as “reasonable” (Eversource), but two opposed the exclusion as unnecessary and unfair (TMLP, BSHA).

**Response:** EEA and MassDEP are expanding the proposed geographic eligibility criteria to include generators in Connecticut and the two Canadian provinces of Newfoundland and Labrador. These changes were generally supported by commenters and, because they increase the number and variety of generators, they may lower costs by supporting competition among clean energy generators. While not addressed by commenters, EEA and MassDEP also note that Newfoundland and Labrador are unique in that they are electrically isolated from the remainder of the North American electricity system (other than neighboring provinces in Eastern Canada), so including them represents a reasonable and limited exception to the general rule that clean generators must be located in New England or adjacent jurisdictions. EEA and MassDEP are not expanding eligibility to smaller hydroelectric generators because, as noted by one of the commenters, “nearly all hydropower across New England currently participates in one or another jurisdictional programs.” Therefore, including smaller hydroelectric generators is not necessary, and could result in “shuffling” of clean generation among states, as discussed below.

**Comment:** Several commenters addressed the proposed restrictions on participation by generators that have previously participated in other clean energy crediting programs. The commenters opposed these restrictions as unnecessary, particularly for generators located in Massachusetts (BSHA, Firstlight). Others requested that EEA and MassDEP clarify the regulatory language to address cases in which only a portion of a generator’s output has been credited to another program in the past (Brookfield, HQ, RENEW). One commenter requested that the proposed time period over which generators must not have participated in other programs be shortened to two years (BSHA).

**Response:** EEA and MassDEP are retaining restrictions on participation by generators that have previously participated in other clean energy crediting programs, including for generators located in Massachusetts. To understand the reason for these restrictions, it is useful to consider a generator located in Massachusetts that has previously had its generation credited toward compliance with another state’s clean energy requirement. If the CES-E were to allow this generator’s clean energy to be credited to Massachusetts, the amount of clean energy credited to the other state would be reduced, thereby “shuffling” the crediting among states without reducing emissions. This outcome would not be consistent with the purpose of the CES-E, which is to “lock-in” the contribution of existing resources to Massachusetts’ clean energy supply, not to cause changes in the generation and crediting of clean energy. The final regulation includes clarifying language that shortens the number of years considered to three years, and adds a provision to exclude the year with the lowest amount of uncredited generation from the calculation.

**Comment:** Two commenters asked that the proposal be revised to allow for a limited amount of “banking” of unused certificates for use in future compliance periods for CES-E (National Grid, TMLP). According to one of these commenters, this could be helpful in cases where the number of certificates needed for compliance is not precisely known far in advance of the compliance deadline (National Grid).

**Response:** EEA and MassDEP are not making this change because it would add complexity to the program and is not necessary. No other commenter identified a need for banking, and the commenter that requested the inclusion of limited banking acknowledged that there is likely to be a surplus of certificates available for compliance each year, reducing the need for banking. Regulated entities that do not obtain exactly the correct number of certificates by the compliance deadline also have the option of making alternative compliance payments.

**Comment:** Several commenters addressed the proposal to “grandfather” electricity sellers’ contracts with customers. One commenter opposed grandfathering these contracts because of differences in how grandfathering affects competitive supplier customers compared to distribution company “basic service” customers (National Grid). Several commenters strongly supported grandfathering, but asked that the proposed grandfathering deadline of February 20, 2019 be set at a later date, such as the date the regulation is finalized (Eversource, RESA, Direct Energy, TEC).

**Response:** The final regulation includes a revised deadline of October 4, 2019 for grandfathered contracts, the date on which the regulation was formally proposed for public comment. This deadline accommodates electricity sellers’ and customers’ interest in knowing potential regulatory requirements before entering into contracts. The regulation finalization date is not being used because grandfathering contracts initiated during the public comment period would create a precedent that would encourage the use of long-term contracts to avoid the impacts of proposed regulations.

**Comment:** One commenter requested that the per-generator limit on certificate generation of 2.5 million MWh be reduced (Brookfield). Another asked that it be eliminated (TMLP).

**Response:** This limit is retained in the final regulation to ensure that the largest clean energy generators are able to participate in the CES-E at a level consistent with their historical contribution to Massachusetts’ clean energy supply, as documented in MassDEP’s greenhouse gas emissions inventory. However, the requirement has been revised to clarify that multiple co-located generation units are not allowed to exceed the limit in aggregate.

**Comment:** One commenter requested that the documentation requirements for electricity imported from outside New England be eliminated because they are duplicative of other requirements (HQ US).

**Response:** To address this comment, the final regulation includes a new provision specifying that if other available information can be used to adequately address the documentation requirements of 310 CMR 7.75(7)(b)1., then that information can be utilized by MassDEP to verify compliance, and submission of the duplicative documentation is not necessary.

**Comment:** Two commenters addressed the proposed schedule for specifying adjustments to the percentage standard to address changes in electricity sales. One of these commenters requested an extended schedule, so that the percentage requirement for a year can be known with certainty well in advance of the beginning of the year (RESA). The other commenter requested that the

schedule be shortened, so the percentage standard can be set using the latest available data (National Grid).

**Response:** The final regulation slightly extends the schedule such that each year's standard is adjusted based on electricity sales data from four years before the compliance year, in contrast to the proposed three-year schedule. The schedule is being extended by one year because EEA and MassDEP believe that it is more important to provide advance notice than to set the standard using the most recent available data. EEA and MassDEP also note that, because electricity sales tend to change only gradually over many years, and the regulation requires that the standard be rounded to the nearest percent, the specific schedule is unlikely to affect the standard in many years. Finally, this change corrects an inconsistency between the schedule for adjusting the compliance obligation and the schedule for addressing "grandfathered" contracts.

**Comment:** Several commenters provided information about the ownership of clean generators, suggesting that the regulation may address situations in which a clean generator has multiple owners (CT DEEP, National Grid, MMWEC). One of these commenters suggested clarification that the regulation does not place any restrictions on ownership of CES-E eligible certificates in such situations (MMWEC).

**Response:** The regulation does not place any restrictions on ownership of CES-E eligible certificates. Consistent with other similar regulations, such as the currently effective Clean Energy Standard and the Massachusetts Department of Energy Resources' Renewable Portfolio Standard program, the regulation does not explicitly address situations in which a clean generator has multiple owners. Each generator currently has an account in the regional certificate tracking system into which CES-E eligible certificates will be deposited, and the regulation does not place any restrictions on how multiple owners manage the certificates. Of course, all owners should be aware of all relevant regulatory requirements, such as the 310 CMR 7.75(5)(a), (5)(b)1.d. and (7)(b)2.d. that certificates used for compliance with the CES-E must represent attributes of the clean generator that "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."

**Comment:** Several commenters expressed support for including municipally-owned utilities in the CES and CES-E (MCAN, National Grid, Harvard, TEC, Commissioner, PMLP, private citizens).

**Response:** MassDEP continues to review the possibility of including Municipal Electric Departments and Municipal Light Boards in the Clean Energy Standard.

## List of Commenters

Associated Industries of Massachusetts (AIM)  
Bay State Hydropower Association (BSHA)  
Brookfield Renewable  
Calpine Corp & Vistra Energy Corp.  
Connecticut DEEP

Conservation Law Foundation (CLF)  
Direct Energy  
Energy New England (ENE)  
Eversource Energy  
FirstLight Power  
Harvard University  
Hydro Quebec US  
Massachusetts Climate Action Network  
MA Municipal Wholesale Electric Company (MMWEC)  
Michael Schaaf (private citizen)  
Nalcor Energy  
National Grid  
NextEra  
RENEW Northeast  
Retail Energy Supply Association (RESA)  
Richard Chase (Commissioner, Princeton Municipal Light Plant or PMLP)  
Taunton Municipal Light Plant (TMLP)  
The Energy Consortium (TEC)  
West Boylston MLP