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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

October 2022

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 Massachusetts Executive Office of Energy and Environmental Affairs (EEA) and Massachusetts Department of Environmental Protection (MassDEP) finalized 310 CMR 7.75: *Clean Energy Standard (CES)* Regulation to require retail sellers of electricity to provide increasing quantities of clean electricity to their customers in Massachusetts. The CES Regulation includes a percentage standard for each year and specific eligibility requirements, including an emissions-based qualification threshold and a requirement that eligible generators must have commenced commercial operation after 2010. The CES was amended in 2017 to accommodate energy contracted pursuant to Chapter 188 of the Acts of 2016, *An Act to Promote Energy Diversity* ("Section 83D power"), and again in 2020 to add the "CES-E" requirement to maintain the clean energy supply from pre-2011 nuclear and large hydroelectric generators. Most recently, amendments to the stringency and Alternative Compliance Payment (ACP) provisions of the CES were proposed in April 2022 and are now being finalized.

Additional information about the CES, including current and past rulemaking documents and all other documents referenced in this Response to Comments, can be found at <https://www.mass.gov/guides/clean-energy-standard-310-cmr-775>. After considering the comments received, EEA and MassDEP are finalizing the amendments with no substantive changes, for the reasons explained in this response to public comment. This document summarizes and responds to comments that were received during the public comment period.

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 April 29, 2022, 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 April 29, 2022, and interested parties were notified via electronic mail. The public hearings were held virtually on May 24, 2022, at 10:00am and 6:00pm. The public comment period closed on June 3, 2022. A list of commenters is included at the end of this Response to Comments document. A Background Document was published on the website referenced above to provide commenters with detailed information about the rationale for the proposed amendments and other relevant information.

Comments and Responses

Comment: Several commenters generally support the amendments (HQUS, CLF, Green Energy Consumers, NECEC). One commenter noted the proposed changes should be implemented by January 2023 (GLSD).

Response: EEA and MassDEP appreciate commenters support of the proposal and is finalizing the amendments in 2022, including changes to the ACP rates that apply to the 2022 compliance year.

Comment: One commenter suggested the rulemaking should be postponed until after the publication of the final 2030 Clean Energy and Climate Plan (CECP) to avoid multiple rulemakings (Constellation).

Response: The amendments are consistent with the final 2030 CECP, which was published on June 30, 2022.

Comment: Many commenters support increasing the CES stringency (Benthall, Brookfield, Clean Asset Partners, CLF, CMADF, Cotter, HQUS, GLSD, Green Energy Consumers, NECEC, RENEW, Trombetta). Some of those commenters argued MassDEP should accelerate the increase in stringency faster than what was proposed (Benthall, Cotter, Trombetta), for example by 5% annually from 2023 to 2029 and 1% annually thereafter (Clean Asset Partners) or to 60% by 2025 and at least 75% by 2030 (Green Energy Consumers). Two commenters suggested options for accommodating Section 83D power by making the stringency contingent on the delivery of such power (AIM, National Grid) or by adding a separate “class” to the CES instead of increasing the stringency (National Grid).

Response: EEA and MassDEP are finalizing the increase to the CES stringency as proposed. A CES that reaches 60% by 2030 is a key component of the Commonwealth’s planning to achieve the greenhouse gas (GHG) emissions reductions required in 2030 by the 2021 climate legislation. Further, the increased stringency is consistent with both the Interim CECP and the Final 2030 CECP. EEA and MassDEP consider the timing and pace of the increase in stringency appropriate given the need to reduce emissions from the electricity sector by 2030 while allowing sufficient time for the necessary clean energy resources to come online. EEA and MassDEP note that the CES was intentionally designed to ensure the Commonwealth achieves its legally mandated emissions reductions while allowing compliance flexibility. Consequently, tying the stringency of the CES to any specific project is not consistent with the program design or intent. As explained in the Background Document, “the regulatory text prioritizes achievement of the standard over supporting any particular energy resource by allowing retail electricity sellers to meet the standard using any combination of RPS [Renewable Portfolio Standard] Class I-eligible resources, 83D power, and other qualifying clean energy.”

Comment: Two commenters indicated that EEA and MassDEP should consider whether changes to the CES will have negative impacts on organizations with existing energy contracts (NECEC, RESA). Some commenters argued that all existing retail electricity contracts as of the

final date of promulgation should be exempt from increased compliance obligations until those contracts expire (Constellation, PowerOptions, RESA).

Response: EEA and MassDEP are not making any changes to the proposal in response to these comments for several reasons. First, EEA and MassDEP explained why it is not appropriate to provide an exemption for certain contracts executed before the regulations are finalized when it finalized the CES-E requirement in 2019: “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.” Second, the changes being finalized at this time were first announced in the Interim Clean Energy and Climate Plan that was published in December 2020. Therefore, retail electricity sellers have had sufficient advance notice that EEA and MassDEP were considering increasing the stringency of the CES. Also, EEA and MassDEP policies contained in Global Warming Solutions Act (GWSA)-mandated climate plans are similar to proposed regulations, as they put the regulated community and the public on notice of a change or new requirement: grandfathering contracts initiated between when a policy change is announced in a GWSA-mandated climate plan and when the corresponding regulations are finalized would create a precedent that would encourage the use of long-term contracts to avoid the impacts of regulations announced in GWSA-mandated climate plans. Third, the changes to the CES stringency do not take effect until 2026, allowing sufficient planning time for retail electricity sellers to address these changes in contracts. Fourth, the CES-E percentage can vary from year to year based on the estimated total electricity sales and the cost impact of the change in the CES-E percentage is projected to be very small, at less than 0.1% of electricity bills, so accommodating the change in the CES-E requirement will not be burdensome for retail electricity sellers or their customers. Finally, EEA and MassDEP note that all four of these reasons are particular to this rulemaking; EEA and MassDEP may consider contract exemptions in future rulemakings as it has in the past.

Comment: Several commenters support increasing the CES-E stringency as proposed (CLF, HQUS, NEER, RENEW). HQUS recommends the stringency of the CES-E be reevaluated in 2023 considering market conditions (HQUS). One commenter suggested analyzing the benefits of increasing the CES-E beyond 25% (RENEW). Another commenter argued that the CES-E stringency should not be increased from 20% to 25% because increasing the stringency assumes that the 12 terawatt-hours (TWh) of generation from 2018 will continue in the future and does not account for load increases anticipated from electrification efforts (National Grid).

Response: EEA and MassDEP are not making changes to the proposal in response to these comments. As explained in the FAQ, the stringency of the CES-E will adjust over time to accommodate load growth including from electrification efforts.¹ Further, the intent of the CES-E is to maintain the historic contribution of existing clean generation units not to accommodate changing market conditions.

Comment: One commenter argued that forecasted load should be used for the CES-E calculation instead of historical load and that the 2018 baseline should be reset if the 12 TWh of historic generation decreases (National Grid).

¹ <https://www.mass.gov/doc/frequently-asked-questions-massdep-clean-energy-standard/download>

Response: The rationale for the load-based adjustments to the CES-E stringency was addressed in the 2020 Amendments² and is beyond the scope of the current proposal. As explained in the FAQ document available on the CES program web site (see link above), the CES-E stringency after 2022 is calculated accounting for significant changes in load from 2018.

Comment: Several commenters provided feedback on the eligibility of specific resources for the CES or CES-E. One commenter argued for reducing or eliminating combustion technologies, including woody biomass, from the CES (CLF). Other commenters requested changes to the eligibility requirements of the CES-E to allow participation by more legacy generators in New England, particularly small-scale hydropower (Brookfield, RENEW). One commenter requested an increase of the 2,500,000 MWh annual cap for qualifying CES-E facilities to 3,500,000 (NEER).

Response: The eligibility of specific resource types to generate clean generation attributes and clean existing generation attributes is beyond the scope of the amendments under consideration because no changes were proposed to generator eligibility. Additional information about the rationale for the regulatory requirements can be found in past rulemaking documents.³

Comment: One commenter said the CES should be reviewed every 5 years instead of every 10 years (AIM) while another requested the CES and CES-E be recalibrated periodically (CLF). Two commenters stressed that ACP rates should also be reviewed periodically (HQUS, CLF).

Response: Although a program review is only required every 10 years, EEA and MassDEP may propose amendments as needed to maintain program effectiveness and meet GHG emissions reductions goals, consistent with past practice.

Comment: One commenter asked EEA and MassDEP to require GHG emissions reporting from retailers or importers or producers of hydroelectric power, and that the reported emissions be included in the annual GHG inventory (CLF).

Response: The proposed amendments do not pertain to GHG emissions reporting requirements or the GHG inventory and consequently the comment is beyond the scope of the proposed amendments.

Comment: Many commenters support the proposal to decouple the CES and CES-E ACP rates from the RPS Class I ACP rate (Clean Asset Partners, HQUS, NECEC, CLF, Green Energy Consumers, NEER, RENEW). One commenter asserted that ACP rates should be based on market values for similar clean energy attributes in New England (HQUS). Commenters generally supported raising the CES ACP rate, with some finding the proposed CES ACP rate of \$35/MWh appropriate (Clean Asset Partners, NECEC, CLF) and others arguing for a higher CES ACP rate, such as \$40/MWh (Brookfield, CMADF, GLSD, Green Energy Consumers, RENEW). Two commenters suggested the CES ACP rate be adjusted annually by the Consumer Price Index (CMADF, GLSD). However, some commenters argued that EEA and MassDEP should not change the CES ACP rate (FPP, National Grid). Two commenters

² <https://www.mass.gov/lists/past-310-cmr-775-rulemaking-stakeholder-documents#2020-amendments->

³ <https://www.mass.gov/lists/past-310-cmr-775-rulemaking-stakeholder-documents>

expressed concern that raising the CES ACP rate would hurt consumers by increasing electricity bills without helping Massachusetts achieve its climate goals (FPP, National Grid). One of those commenters also suggested a lower CES ACP rate would likely not significantly impact the market as most of the CES requirement will be met with RPS Class I RECs and Section 83D power (National Grid).

Response: EEA and MassDEP are not making any changes in response to these comments. MassDEP notes that when the CES was first created, the RPS Class I ACP rate was \$70/MWh and by setting the CES ACP rate as 50% of the RPS Class I ACP rate, MassDEP was effectively setting the CES ACP rate at \$35/MWh. The proposed amendments address changes to the RPS Class I ACP rate that were not anticipated when the CES was promulgated and are necessary to maintain the \$35/MWh rate. Although there is support to raise the CES ACP rate above \$35/MWh, retaining the rate at \$35/MWh better addresses the intent of maintaining stability the ACP rate and recognizing that RPS Class I resources are the Commonwealth's most preferred clean generation sources. Conversely, keeping the CES ACP rate too low could result in regulated entities to making ACP payments rather than purchasing clean generation certificates, counter to the intent of the CES. Regarding the impact on electricity rates, EEA and MassDEP believe that the incremental clean energy costs are more appropriately attributed to the 2021 Climate Law requirement to limit emissions in 2030 than to the CES.

Comment: Some commenters support the increase of the CES-E ACP to \$10/MWh, as proposed (Brookfield, CLF, NEER). One commenter argued that the CES-E ACP should be lower than the proposed \$10/MWh because it would provide an unnecessary additional revenue stream to CES-E generators (National Grid). Conversely, another commenter requested the CES-E ACP be set at \$20/MWh (RENEW).

Response: EEA and MassDEP are not making any changes in response to these comments. EEA and MassDEP determined that \$10/MWh is a reasonable rate that supports clean generation while providing an affordable alternative compliance option. EEA and MassDEP note that revenue to CES-E generators will be generated from the sale of clean existing generation attributes, whose value will be set based on market dynamics and may remain well below the ACP rate of \$10/MWh.

Comment: Two commenters raised concerns that the proposed changes to the ACP rates affect the current year and requested that changes in the ACP rates be delayed until at least 2023 (Constellation, RESA).

Response: EEA and MassDEP are proceeding with the changes to ACP rates as proposed, including for 2022, for several reasons. First, the proposed ACP rates are more consistent with past ACP rates than the drop to \$25/MWh that would occur in 2022 without these amendments (see comments above for a discussion of the specific values for the CES and CES-E ACP rates), so finalizing the amendments may contribute stability to the market for compliance credits. Second, stakeholders had adequate notice of the potential for change, as EEA and MassDEP first raised the possibility of decoupling the ACP rates from the RPS Class I ACP rate in May 2021 and remained consistent in communicating to stakeholders and retail electricity sellers that MassDEP was considering setting the CES ACP rate at \$35/MWh and the CES-E ACP rate at

\$10/MWh. Third, the ACP is an alternative option for compliance, not the primary or preferred option, and retail sellers still have until the 2022 compliance deadline of July 1, 2023 to procure clean energy certificates if they wish to avoid complying with ACPs. Fourth, stabilizing the ACP at \$35/MWh is the best option for supporting the accelerated clean energy development that is needed to meet the 2030 emission limit. Finally, as noted in comments above, there is considerable support for the changed ACP rates as proposed from other commenters.

Comment: Several comments addressed banking. The commenters argued 1) EEA and MassDEP should allow retail sellers to bank up to 1% of their clean existing generation attributes for one year to allow retail sellers a slight buffer when purchasing CES-E CECs (National Grid), 2) that there should be strong limits on banking, generally, and attribute banking should be curtailed (CLF) and 3) the clarifying language related to banking limits is appropriate (RENEW).

Response: EEA and MassDEP are not making changes in response to these comments because as stated in the Background Document, the proposed changes are solely for clarity of language rather than substantive changes to the banking requirements.

Comment: One commenter argued for prohibiting the resale of CES-E certificates because the market is oversupplied, and resale of certificates exacerbates market oversupply (NEER).

Response: Restrictions on sales of CES-E certificates is beyond the scope of the proposed amendments. EEA and MassDEP note that the CES-E aims to maintain the historic contribution of certain clean energy resources, not create a specific number of certificates. Allowing CES-E certificate transfers consistent with market dynamics provides the most flexibility to regulated entities and should minimize costs to consumers.

Comment: Several commenters support removing the capacity obligation to align with DOER's amendments to RPS Class I (HQUS, National Grid, RENEW) whereas one commenter requested the obligation be retained (NEER). One commenter noted a minor deletion of an internal reference in the regulatory text is needed to fully remove references to the capacity obligation from the regulation (HQUS).

Response: EEA and MassDEP are removing the capacity obligation to align with DOER's amendments to the RPS Class I, as proposed, and has made the required deletion in the final version of the amendments.

Comment: To fill the gap between the MassSave program and the Clean Peak Standard, one commenter argued the CES should include a requirement for electric distribution companies to plan to reduce peak demand by 50% by 2025 and to file a plan to pay for the strategies included therein with DPU (CLF).

Response: Addressing issues around peak demand are beyond the scope of the proposed amendments.

List of Commenters

Associated Industries of Massachusetts (AIM)
Maggie Benthall
Brookfield Renewable (Brookfield)
Clean Asset Partners
Coalition of Massachusetts Anaerobic Digestion Facilities (CMADF)
Conservation Law Foundation (CLF)
Constellation NewEnergy (Constellation)
Mike and Cyndy Cotter (Cotter)
First Point Power (FPP)
Greater Lawrence Sanitary District (GLSD)
Green Energy Consumers Alliance (Green Energy Consumers)
Hydro-Quebec Energy Services (U.S.) Inc. (HQUS)
Northeast Clean Energy Council (NECEC)
National Grid
NextEra Energy Resources, LLC (NEER)
PowerOptions
RENEW Northeast, Inc. (RENEW)
Retail Energy Supply Association (RESA)
John Trombetta