

**Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs
DEPARTMENT OF ENERGY RESOURCES**

CLEAN PEAK ENERGY PORTFOLIO STANDARD

CPS Compliance Basis GUIDELINE

**for Retail Electricity Suppliers on Determining and Documenting
the Quantity of Sales to End-Use Customers under Contracts
Executed or Extended on or after January 1, 2019, for the Purpose of
Calculating the Annual CPS Annual Obligations**

August 14, 2020

Pursuant to the Clean Peak Energy Standard Regulations at 225 CMR 21.00

This Guideline clarifies the method by which Retail Electricity Suppliers¹ (“Retail Suppliers”)² shall determine and document the quantity of sales to End-Use Customers in the Commonwealth “under contracts executed or extended on or after January 1, 2019,” in order to calculate their annual compliance requirements under the Minimum Standards of CPS. This Guideline is effective for Compliance Year 2019 and thereafter. The Department of Energy Resources (“Department”) will apply this Guideline without exception to the CPS Annual Compliance Filings for Compliance Year 2019 and, unless modified in the interim, for subsequent Compliance Years.

Provisions in the CPS Statute and Regulations

The CPS statute at M.G.L. Chapter 25A, Section 17(a)³ states the following:

Every retail electric supplier providing service under contracts executed or extended after December 31, 2018, shall provide a minimum percentage of kilowatt-hour sales to end-use customers in the commonwealth from clean peak resources. Not later than December 31, 2018 the department shall determine the current percentage of kilowatt-hours sales to end-use customers in the commonwealth from existing clean peak resources during the seasonal peak load hours to establish a baseline minimum percentage of kilowatt-hours sales to end-use customers that shall be met with clean peak certificates beginning on January 1, 2019. Each year thereafter, every retail electricity supplier in the commonwealth shall provide a minimum percentage of not less than an additional 0.25 per cent of sales by retail electricity suppliers in the commonwealth that shall be met with clean peak certificates, as determined by the department.

The CPS statute at M.G.L. Chapter 25A, Section 17 (d) states the following:

This section shall not apply to municipal lighting plants.

¹ Capitalized words in this Guideline are defined in the CPS Regulations. The Regulation can be accessed via links from the DOER homepage at <http://www.mass.gov/doer>.

² This term covers both regulated utilities and competitive suppliers, and corresponds to Load Serving Entity (LSE) in the NEPOOL GIS Operating Rules (<http://www.nepoolgis.com>), except that Retail Electricity Suppliers for MA CPS are limited to LSEs that sell electricity to end-use customers in Massachusetts.

³ CPS was established by Chapter 227 of the Acts of 2018, available at <https://malegislature.gov/Laws/SessionLaws/Acts/2018/Chapter227>

CMR 21.00 defines the following:

Retail Electricity Supplier. A person or entity that sells electrical energy to End-use Customers in Massachusetts, including but not limited to electric utility distribution companies supplying basic service or any successor service to End-use Customers. A municipal lighting plant shall be exempt from the obligations of a Retail Electricity Supplier under 225 CMR 21.00 as it is exempt from the requirements of the Clean Peak Standard pursuant to M.G.L. c. 25A, § 17(d).

CMR 21.07 (1) (a) states:

CPS Minimum Standard. 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.

(a) The CPS Minimum Standard shall increase by one-and-one-half percent (1.5%) each year, subject to the conditions described in 21.07 (1)(b).

Determination of CPS-Obligated Contracts and Exempt Contracts

DOER regards the CPS Minimum Standard as established in regulation, beginning at zero percent (0%) in 2019 and increasing one-and-one-half percent (1.5%) each year thereafter, to apply to all Basic Service load served by the regulated utilities. The CPS Minimum Standard applies only to regulated utilities and does not apply to municipal lighting plants as they are exempt from the requirements of the Clean Peak Standard pursuant to M.G.L. c. 25A, § 17(d).

If the execution date of a contract for providing electricity on a retail basis to a Massachusetts End-Use Customer (“Retail Customer”) is on or after January 1, 2020, then the CPS Minimum Standards apply to the entire quantity of electricity needed to supply that Retail Customer with electricity during each Compliance Year or portion thereof during the term of the contract. The execution date is either the date on which both parties to the contract have signed it, or on a date specified in the contract as the execution date. It is not necessarily the date when the contract term begins; thus, if a contract was executed in 2019 and took effect on a specified date in 2020, it is the execution date that governs.

In the case of a Retail Supplier’s contract to supply electricity to a Retail Customer that has an execution date prior to January 1, 2020, the quantity of electricity supplied to such Customer is subject to the CPS Minimum Standards *only if and when* the contract is extended on or after January 1, 2020. DOER regards an extension to have occurred at any point in time when the contract is subject to (a) a renewal provision that is based on a time or date trigger (such as “this contract shall renew itself X months after its execution date,” or “on date X”), (b) mutual agreement between the parties to the contract, or (c) the imposition of a higher cost that is based on the Retail Supplier’s incurring higher costs for CPS compliance.

If a Retail Supplier is uncertain as whether a particular pre-2020 contract has been “extended” on or after January 1, 2020, that Supplier has two choices:

- The Supplier can assume that the contract *has* been extended (and so state in the Annual Compliance Filing) and acquire the quantities of CPECs⁴ consistent with that assumption. In such case, DOER will accept that assumption without challenge.
- The Supplier can describe to DOER the particular circumstance and contract provisions and request that DOER provide a decision. However, this process must be initiated as soon as possible to allow for sufficient time for review. *DOER will accept no such requests for Compliance Year 2020 after May 25, 2021, nor after May 15 in subsequent years.*

In the case of a Retail Supplier’s contract to supply electricity to a Retail Customer that has an execution date prior to January 1, 2020, and that was extended on or after January 1, 2020 consistent with the above guidance on extension, then the CPS Minimum Standard will apply to all electricity supplied as of the effective time and date of the extension.

Thus, an Exempt Contract is a contract that was executed before January 1, 2020, and the electricity supplied thereunder is *not* subject to the CPS Minimum Standards until such time on or after January 1, 2020, that the contract is extended in one of the manners described above.

In addition, a Retail Supplier may, if it so chooses and for whatever reason, decide to treat *none* of its contracts as exempt, even if some arguably are Exempt Contracts per the above discussion. In such case, the Supplier must so state in its Compliance Filing (without identifying the term, counterparties, or financial information of any individual contract), and DOER will not require any documentation of such potentially Exempt Contracts.

With the exception of the choice described in the previous paragraph, a Retail Supplier must be *prepared* to document its identification of Exempt Contracts and its decisions as to the periods of time that such contracts were exempt, as outlined in the final section of this Guideline.

Calculating the Quantities Required to Meet the CPS Minimum Standards

The basic equation for calculating the quantities required to meet the CPS Minimum Standards for each Compliance Year (CY) is the following:

$$(TLO - ECLO) \times MS = \text{MWh of Compliance Obligation}$$

where TLO = Total Load Obligation during the CY;

ECLO = Exempt Contract Load Obligation (including line losses) attributable to providing electricity under Exempt Contracts during their periods of exemption during the CY; and

MS = the Minimum Standards under CPS for the CY.

The Total Load Obligation for each Retail Electricity Product of each Retail Supplier, as specified above in 225 CMR 21.07 is the total of the correctly allocated shares of the monthly figures provided to the Retail Supplier by the ISO-NE to the NEPOOL GIS and then recorded by the GIS in the Supplier’s main account. That figure *should* be the same as the monthly Load Obligation figures provided to each Supplier by its host regulated utility companies, including Monthly Meter Adjustments. DOER regards the Load Obligation figures from the regulated

⁴ CPECs are Clean Peak Energy Certificates. CPECs are an electronic certificate which is minted or created at the NEPOOL GIS, and is used for compliance with only the Minimum Standard of the energy portfolio standard under which it is qualified.

utilities, including Monthly Meter Adjustments, to be the final determinant of the correct figures for each of the Retail Suppliers, superior to the load that a Retail Supplier allocates to its Retail Electricity Product subaccounts at the NEPOOL GIS, unless and to the extent that a Supplier can document the correctness of its GIS subaccount allocation figure to the satisfaction of DOER.

DOER does not specify exactly how a Retail Supplier must calculate the portion of its Load Obligations that is attributable to providing electricity under Exempt Contracts during their periods of exemption. However, DOER expects that the following would be taken into account for each Exempt Contract during each applicable Compliance Year:

- The contract execution and, if any, its extension and termination dates;
- The quantity of electricity delivered under each contract during the exempt days of the year;
- A justifiable basis for determining the line losses associated with the delivery of electricity under the contracts; and
- Any additional factors that the Retail Supplier regards as providing accuracy.

The Retail Supplier should make this calculation for each Exempt Contract, add them together, and then subtract that sum from the total Load Obligation for the year. The result is the quantity of Load Obligation by which each of the annual RPS Class II, AP, and CPS Minimum Standards for the year must be multiplied. Further information about the Filing is in the final section, below.

Documentation of Exempt Contracts under the CPS Minimum Standards

This section explains documentation of the load that is exempt from the CPS pursuant to the CPS statute.

DOER has no desire or need to receive the Annual Compliance Filings copies of Exempt Contracts. Furthermore, DOER will *not* request the names of counterparties to Exempt Contracts, *nor* the financial information for any such contracts. Rather, as part of its determination of the load obligation attributable to its Exempt Contracts, each Retail Supplier shall prepare for each Compliance Year (but *not submit* with its Annual Compliance Filing), documentation of the information and methodology by which the load served under Exempt Contracts during each such Compliance Year was determined.

Although DOER will not request any contract-specific information as part of the Annual Compliance Filing, the Filing will include an affidavit attesting to the accuracy of the data submitted for the Compliance Year of the Filing, and DOER will reserve its regulatory rights of inspection and audit in 225 CMR 21.11. DOER will expect that each Retail Supplier will consider in calculating the data provided its Filing spreadsheet (described below) all relevant and appropriate factors, as listed in the previous section of this Guideline

The Annual Compliance Filing Forms will include a template spreadsheet. DOER shall use its authority under M.G.L. c. 25A, sec. 7 to keep confidential each Retail Supplier's individual spreadsheet data. On the initial spreadsheet each Retail Supplier will provide for each calendar month of Compliance Year the number of Exempt Contracts and the total electricity (MWh) provided under those contracts. If those monthly MWh quantities do not include line losses, then the MWh of line losses will be added to the total MWh for the year on the spreadsheet. Compliance Year's total Exempt Contract Load Obligation, including line

losses, will be entered in the spreadsheet for reporting compliance data, and that total will be subtracted from the Total Load Obligation for the Compliance Year before calculating the CPS obligation. Total Load Obligation, which already includes line losses assigned by the regulated utilities, is the starting point for calculating compliance with each of the MA energy portfolio standards.

In addition to data for Compliance Year, DOER will request in the above-described template spreadsheet the number of Exempt Contracts actually *or expected still to be* in place at the start of each year for 2020 through 2024, as well as *projections* of annual electricity delivery under such contracts. DOER also may request such projections on the equivalent spreadsheets for subsequent Annual Compliance Filings, but for fewer years if appropriate. Although each Retail Supplier's projections will be held confidential, DOER may report aggregated projections to market participants in order to facilitate intelligent planning and market activity.