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DOER proposes that all clean peak resources be registered with NEPOOL GIS as Non-NEPOOL participants.

We would strongly recommend against DOER predetermining that they will assign the registry role to a specific private, unregulated entity in the form of NEPOOL GIS.

NEPOOL GIS is often conflated by state agencies with FERC regulated NEPOOL, however it is an independent, unregulated private entity which is simply owned by NEPOOL and is **not** regulated by FERC (We've asked FERC!). Neither FERC nor any state regulator or state agency in Massachusetts has regulatory authority or jurisdiction over NEPOOL GIS, and as such it should be entitled to no special treatment or provided any advantages over any other entity that wishes to provide these services. Under the arrangement DOER suggests, no state or federal agency will have contracted with NEPOOL GIS, and therefore will have no contractual authority over NEPOOL GIS. In fact, in the Stakeholder Questions document itself DOER states "This would mean that, as required by the NEPOOL GIS operating rules..." effectively stating that this third party entity's operating rules not only are outside DOER's control but that DOER is fully abdicating their responsibility to fully control the design of a state program legislators entrusted them to implement by starting with the premise that the program must, before anything else, conform to a private, third party entity's internal operating rules!

1. This presents several serious government oversight and fairness issues.
 - a. NEPOOL GIS would play a crucial role in the CPS's success, but neither DOER or any other state agency could compel NEPOOL GIS to take or refrain from taking any action related to the CPS tracking and retirements under a regulatory, contractual, or any other basis other than voluntary compliance by NEPOOL GIS. While this same situation exists for the portfolio standards, that fact does not make it any more acceptable from a good governance or policy perspective and in fact there have been serious issues in the past with NEPOOL GIS software that DOER has been at the mercy of NEPOOL GIS to rectify. It is unacceptable that any major state program be knowingly placed in the hands of a third party which no state agency has any regulatory or contractual authority over, where they must essentially depend on that entity's continuing good will on an ongoing basis for program success.
 - b. DOER as a state agency will be by definition granting a no-bid contract to NEPOOL GIS to perform this function or declaring them the effective monopoly provider of this function. At the same time DOER will have no say in the fees charged by NEPOOL GIS as the monopoly provider to either Clean Peak Providers or entities subject to the CPS. We do not believe that DOER has the statutory authority to either declare an unregulated monopoly provider or grant a no-bid contract in this instance. We believe the only acceptable solution in this case is for DOER to develop a set of requirements, issue a public RFP, and contract with the winner of the RFP to provide the registry services necessary for this program in accordance with commonwealth procurement law and guidelines. We would note that the fact that this wasn't done in the past provides no justification for granting a similar unregulated monopoly in a future program like the CPS. We would also point out that at least in the case of the



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Renewable Portfolio Standard NEPOOL GIS was specifically named in the law, where no such legal justification exists for the Alternative Portfolio Standard or Chapter 227 of the Acts of 2018 covering the CPS. We would also note that MassDEP in 2017 issued an RFP and selected and contracted with APX Environmental Markets to build and run the MASSDEP Allowance Tracking System rather than granting a monopoly for that to NEPOOL GIS, so the most recent precedence in Massachusetts is to use this correct method of selecting and overseeing a tracking registry rather than defaulting to NEPOOL GIS based solely on what amounts to a mistake of history. We also note that recent registry RFPs have yielded very competitive results with a number of firms and entities from APX to PJM-GATs and M-RETS placing competitive bids, so there is no lack of available entities to perform this role. At the very least, opting not to perform an RFP represents a sole source award and must legally be processed as such.

- c. DOER proposes that participants in the program be enrolled as “Non-NEPOOL Participants”. This again highlights a serious governance issue with NEPOOL GIS, namely that Non-NEPOOL participants have very limited input in the manner in which NEPOOL GIS is run, and it is both cost prohibitive and, in some cases, flatly prohibited by NEPOOL GIS rules for many of these entities to become NEPOOL Participants, rules that the NEPOOL Participants alone set and even DOER, in this very draft document, states that they are bound by! Although they have more recently been granted a limited advisory role in the system, they can effectively be overruled at any time by NEPOOL participants. And NEPOOL participants are generally the entities who will be required to retire credits under this program, effectively the fox guarding the henhouse. DOER would be purposely setting up an asymmetric and unfair governance situation where clean peak resources would be junior members with limited say in NEPOOL GIS governance while CPS compliance entities, who generally are NEPOOL participants, would have full membership and effectively veto power in how the CPS registry runs. Since, as pointed out above, no state agency has regulatory or contractual authority over NEPOOL GIS, DOER would be knowingly setting up a situation where the generation half of the CPS equation was nearly powerless against the retirement half, and DOER had abdicated all power to intervene. Again, this is an unacceptable situation to knowingly enter into, regardless of the past relationship with NEPOOL GIS.

2. In addition to the governance issues listed above, there is no indication that NEPOOL GIS is capable of meeting the requirements of tracking the CPS as envisioned in the CPS Draft Stakeholder Questions. This draft envisions the potential requirement to track demand response and energy storage resources as well as generation resources, and not only track their absolute production but crucially track their production during certain hours of the day. This far exceeds anything the NEPOOL GIS system has demonstrated itself capable of. In fact, history has shown the NEPOOL GIS software to be very unresponsive to new programs as evidenced by the system slowing to an unusable crawl when the MA solar program started and the fact that it is to this day unable to generate credits any more frequently than quarterly. In addition, the NEPOOL GIS governance structure is also particularly ill equipped to handle prioritizing and approving improvements to the IT system, something that DOER staff is intimately familiar with. Given



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that, as we pointed out above, DOER has no formal authority over NEPOOL GIS it seems especially irresponsible to give them the responsibility to conduct a significant upgrade to their software required for it to not only perform a task it has never performed but a groundbreaking task that isn't done by any registry software anywhere at the current time. All with absolutely no legal, regulatory, or contractual oversight from any MA state agency.

DOER proposes that they will choose an Independent Third Party Meter Reader.

1. We note that this proposal is based on the implicit assumption that NEPOOL GIS has already been chosen to act as the monopoly registry, and as we pointed out above implicitly assumes that DOER is somehow bound by NEPOOL GIS' internal operating rules which are apparently immutable, at least to DOER. We would note that it is not only possible for the registry to act as the independent third party meter reader, but in fact that is exactly how PJM-GATS, with nearly an order of magnitude more renewable generators than NEPOOL GIS (approximately 200,000) has operated for years. If DOER re-examines its initial assumption that it must use NEPOOL-GIS as the registry, then there may not be a need for a separate Independent Third Party Meter Reader. An optimal solution would be for DOER to issue an RFP for a combined registry and independent third party meter reader. This would greatly simplify what is currently a needlessly complex and byzantine system and is in keeping with best practices in other jurisdictions with considerable positive experience in this model, like PJM-GATS.
2. We believe an Independent Third Party Meter Reader model supported in part by user fees is viable and should be encouraged. However we again want to ensure that DOER does not abdicate their responsibility to oversee both the selection and continued operations of this party, which is possible if it is not the result of a contract issued from an RFP issued by DOER under the contracting laws of Massachusetts. We would again caution that neither DOER or any state agency have the authority to grant a monopoly to any party to act as the Independent Third Party Meter Reader supported solely by a fee that monopoly charges its users. They only have the authority to contract with a party to provide those services under the full authority of DOER or another state agency, regardless of the manner of compensation of the party. The only legal alternative to DOER running an open RFP for this position would be operating under a memorandum of understanding with another state or quasi-state agency like MassCEC in much the same manner as the Production Tracking System for solar and renewable thermal are currently run and have been run successfully for many years.