



Commissioner Judith Judson
Massachusetts Department of Energy Resources
100 Cambridge Street, Suite 1020
Boston, MA 02114

April 12, 2019

Re: Clean Peak Standard Straw Proposal

Dear Commissioner Judson:

PowerOptions submits comments to the Massachusetts Department of Energy Resources (“DOER”) on the Clean Peak Energy Standard (“CPS”) straw proposal on behalf of its over 400 members who are retail electricity and natural gas consumers in the Commonwealth. We appreciate DOER’s efforts to design a program that is both simple and effective. We believe that, overall, the straw proposal is well-designed and will incentivize the type of actions and benefits anticipated in the enabling legislation. Our comments focus on a narrow set of issues with the straw proposal: the scope of exempt contracts and the proposal for a utility procurement of Clean Peak Credits (“CPCs”).

Exempt Contracts

While contracts signed or extended on or before December 31, 2018 are exempt by statute from the CPS, contracts that are signed in the time between December 31, 2018 and the effective date of the regulations currently have no such protections and customers are at risk of unanticipated pass-through charges from their suppliers. In order to protect customer interests, existing contracts that are signed prior to the effective date of the new regulations should also be exempt from the CPS for the duration of the contract term. It should be noted that this was done by DOER for the implementation of the solar carve-out when establishing the SREC

regime.¹ This was also done by the Department of Environmental Protection during the establishment of the Clean Energy Standard.²

Utility Procurement of CPCs

The straw proposal contemplates requiring the Electric Distribution Companies (“EDCs”) to conduct a procurement for CPCs. PowerOptions opposes this requirement as it would inhibit the maturation of a fledgling market and would impact the demand and supply balance that is necessary to create a sustainable market. Further, the EDCs have already procured a number of resources that would qualify for CPCs.

With respect to the SMART program, whether CPCs are viewed as “environmental attributes” to which the EDCs have irrevocable right is an important threshold question. With the Department of Public Utilities’ determination that environmental attributes “encompass products that are environmentally related or provide environmental benefits,”³ it seems likely that CPCs would qualify as environmental attributes, meaning that the rights under SMART would flow to the EDCs. This, then, is an existing EDC procurement of CPCs. If SMART resources do qualify for the CPS, the EDCs should be required to sell the CPCs into the market in order to offset the costs of both programs.

¹ 225 CMR 14.08(3)(b)(3) as part of a settlement pursuant to *TransCanada Power Marketing Ltd. v. Bowles*: “The ACP Rate for that portion of a Retail Electricity Supplier’s Solar Renewable Energy Credit obligations that were contractually committed or renewed prior to January 1, 2010, shall be equal to the RPS Class I ACP Rate as calculated for the applicable Compliance Year under 225 CMR 14.08(3)(a)2. This provision does not apply to obligations that were contractually committed or renewed on or after January 1, 2010.”

² 310 CMR 7.75(5)(d): Notwithstanding 310 CMR 7.75(4), in determining the total CES-qualified MWh applied to each retail seller subject to 310 CMR 7.75(4) in 2018 and 2019, the Department shall not include that portion of electrical energy sales that were subject to a contract executed or extended prior to August 11, 2017, provided that the electricity was sold at a price specified in the contract and the retail seller provides the Department with satisfactory documentation of the terms of such contracts. Contracted electrical energy delivered after December 31, 2019 shall be included in the CES, regardless of the contract’s date of execution or extension.

³ D.P.U. 17-140 Order, at 110

In addition, the EDCs (and Cape Light Compact) will also be implementing active demand management and electric storage initiatives, eligible technologies under the Clean Peak Standard, in the context of the 2019-2021 three-year energy efficiency plans. Inclusion of these technologies in the three-year plans will help to alleviate the financing hurdles of storage resources and will presumably lead to CPC generation. The three-year plans act as another EDC procurement for CPCs.

Finally, the EDCs are procuring a potentially significant number of CPCs from the Section 83C solicitations. The definition of Renewable Energy Credits in the PPAs for the Vineyard Wind purchase makes it clear that the EDCs claim title over CPCs as well.⁴ With 800 MW of offshore wind already contracted for and the authority to solicit for another 2,400 MW, the Section 83C solicitations represent a major procurement of CPCs by the EDCs.

As evidenced above, the EDCs are already procuring what may be a significant portion of the CPC market through existing procurement. Thus, in order to encourage the development of an open and dynamic market for CPCs, the EDCs should not be required to procure any further CPCs. To require further solicitations, especially before a market is able to develop, would be misguided.

Conclusion

PowerOptions appreciates DOER's straw proposal and largely supports the design of the Clean Peak Standard. All electricity contracts signed before the effective date of the regulations should be exempt from the standard, as was done in the SREC program and the Clean Energy Standard. Also, the proposed requirement that EDCs procure CPCs through a solicitation would

⁴ D.P.U. 18-76 through D.P.U. 18-78, Exh. JU-3-A, at 14-15

negatively impact the formation of a free market and should not be included in regulations. We look forward to engaging with DOER and other stakeholders as this process progresses.

Sincerely,

A handwritten signature in black ink, appearing to read "Sean Burke". The signature is fluid and cursive, with the first name "Sean" and last name "Burke" clearly distinguishable.

Sean Burke

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