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April 12, 2019

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

Re: Comments on Clean Peak Standard (CPS) Straw Proposal

Dear Commissioner,

New England Battery Storage, LLC (“NEBS”) is pleased to submit comments to the Department’s Clean Peak Standard (“CPS”) straw proposal as presented on April 2. NEBS is a Massachusetts-based energy firm focused on the development of utility-scale battery storage projects. NEBS is developing the first fully-integrated merchant battery energy storage systems in New England that will participate in each of the ISO-New England capacity, energy, operating reserve, and frequency regulation markets. NEBS has two storage projects now under construction and multiple additional storage projects in the development process. NEBS is fully supportive of DOER’s efforts to implement an effective CPS, subject to the limited comments set forth below intended to ensure compliance with the applicable statutory requirements and consistency with existing storage policies of the Commonwealth.

1. The Straw Proposal must require that eligible systems primarily store and discharge renewable energy.

The Straw Proposal should be stated to comply with the express statutory requirement that every “Qualified Energy Storage System” “operates primarily to store and discharge renewable energy....” Notwithstanding such requirement, several comments submitted to the DOER suggest eligibility measures that would not require that any renewable energy be either stored or discharged. For example, under many suggested structures with no collocational requirement, a system that charges exclusively from a diesel generator (and thus neither stores nor discharges any renewable energy) would nonetheless become eligible for Clean Peak Credits (“CPCs”) if, after the fact, it simply purchases REC certificates at the close of a reporting period. That result would violate the plain meaning of the statutory requirement.

The controlling language is the statutory proviso of section 3 of chapter 25A limiting Qualified Energy Storage System eligibility highlighted below:

“Qualified energy storage system”, an energy storage system, as defined in section 1 of chapter 164, that commenced commercial operation or provided incremental new capacity at an existing energy storage system on or after January 1, 2019; provided, however, that such system operates primarily to store and discharge renewable energy as defined in said section 1 of said chapter 164.

In the absence of any requirement of colocation of renewable generation and the storage system, or even the simultaneous timing of renewable generation and charging the storage system, there would be no requirement that a system in fact store or discharge any amount of renewable energy. Notably, neither Massachusetts RECs nor the associated NEPOOL GIS attribute tracking system reflect the hour when renewable energy was generated, foreclosing any ability to thereby indicate that the energy consumed for purposes of storage was in any way related to the coincident generation of renewable energy. Further, Massachusetts RECs may relate to energy produced anywhere in ISO-NE, such that there is no assurance of a geographic proximity to the storage system or the intended benefits in the associated system dispatch. As set forth below, Massachusetts and other jurisdictions appropriately address this issue by measures including colocation, direct renewable source charging, common control and geographic proximity.

2. Current Massachusetts policies require that net metered storage projects be charged with renewable energy and not system power taken off the grid.

Massachusetts has recently resolved the colocation issue in the context of net metering and decided that that net metered storage projects must in fact charge from eligible renewable resources, and not generic system energy taken from the grid. In D.P.U. 17-146-A, “Inquiry by the Department of Public Utilities on its own Motion into the eligibility of energy storage systems to net meter,” the MDPU considered the very same eligibility issues now presented by the Straw Proposal and decided that, in order to ensure the intended policy benefits and avoid manipulation and the “fraudulent receipt” of program credits, storage projects must meet conditions ensuring that a storage system is charged with energy produced by eligible renewable resources, and not by generic system power taken from the grid:

[A]bsent restrictions on the charging or discharging of an ESS, it may be possible for a customer to receive net metering credits for generation that does not come from an eligible net metering source. For example, if an ESS is allowed to both import and export electricity from the electric grid, without restrictions, a customer with a paired system could import electricity from the electric grid and then export that same electricity claiming that it is excess generation produced by its net metering facility. This import/export maneuver would result in fraudulent receipt of net metering credits and an increase in the overall costs of the net metering program borne by all ratepayers.

We further find that allowing a paired system to export to the grid while limiting the ability of the ESS to charge only from the net metering facility ensures that any excess generation for which net metering credits are received comes from an eligible net metering source.

D.P.U. 17-146-A (February 1, 2019) at 28-29. Moreover, the MDPU expressly considered and rejected alternatives whereby the storage system “charges either from the grid or the net metering facility”:

[T]he risk of irregularities or non-compliance with essential rules and regulations is too high for a customer to receive net metering credits for generation that does not come from an eligible net metering resource.

Id. at 31.¹ There is no reason for the DOER to now revisit or revise Massachusetts policy on colocation and program eligibility of storage resources charging with system power taken from the grid. Further, adopting a position similar to that of the MDPU (developed through an extensive and thorough rulemaking process) to limit CPS eligibility to storage systems that charge primarily with renewable energy, and not fossil-generated energy or generic system energy taken off the grid, would further the interests of consistent and coherent Massachusetts policies, inter-agency comity, and the avoidance of unnecessary program conflict and confusion.

3. New York is proposing clean peak program rules limiting storage eligibility by colocation, geographic proximity and common control.

The New York Department of Environmental Conservation is currently proposing rules (6 NYCRR Subpart 227-3, "Ozone Season Oxides of Nitrogen (NO_x) Emission Limits for Simple Cycle and Regenerative Combustion Turbines") for the similar objective of lowering peak emission by setting allowable NO_x emissions from simple cycle and regenerative combustion turbines during the ozone season, such that lower emissions from these sources will help to address Clean Air Act (CAA) requirements, ozone nonattainment and protect the health of New York State residents. Notably, New York proposes limitations on storage system participation similar to those implemented by the MDPU in order to ensure the intended benefit of offsetting emissions from peaking generation facilities:

The owner or operator of an SCCT that uses electric storage or renewable energy resources to inject electricity to the grid may demonstrate compliance with the applicable effective daily NO_x emission limits by including the electrical energy, in MWh, injected

¹ Notably, where the General Court sought to encourage energy storage in connection with non-collocated clean generation projects, it did so without inclusion of the type of proviso at issue in this matter. Indeed, as the MDPU noted in D.P.U. 17-146-A, the legislature added provisions in 2016 that allow clean energy resources to be “paired” with energy storage systems in connection with long-term contracts, with no comparable requirement that the storage system “operate primarily to store and discharge renewable energy.” *Id.* at n.4; St. 2016, C. 188, sec. 12.

to the grid from electric storage and/or renewable generation resources in the emission rate calculation provided that:

- (i) The renewable generation resource and/or the electric storage resource must be directly connected to the same physical substation as the SCCT with which it is being averaged; or
- (ii) within one-half mile radius of the SCCT with which it is being averaged.
- (iii) All sources that are averaged under this compliance option must be under common control.

<http://www.dec.ny.gov/regulations/116131.html>. Similar to the MDPU, the NYDEC has recognized the regulatory problems associated with allowing illusory and non-physical compliance methods associated with the participation of storage facilities in peak-related remediation plans, under which storage systems charged with generic system energy taken off the grid would neither meet the intended policy objective nor have any geographic nexus to the marginal sources of peaking generation facilities.

4. Conclusion

The Straw Proposal should be stated to require compliance with the express statutory requirement that every Qualified Energy Storage System “operates primarily to store and discharge renewable energy....” The DOER should reject those comments suggesting eligibility measures with no colocation or contemporaneous charging requirements that would thus not require that any renewable energy be actually stored or discharged. As noted above, under such suggested structures a system that charges exclusively from a diesel generator (and thus neither stores nor discharges any renewable energy) would nonetheless become eligible for CPCs if, after the fact, it simply purchases REC certificates at the close of a reporting period, a result that would violate the plain meaning of the statute. The DOER should thus adopt eligibility provisions similar to those recently adopted by the MDPU and require that battery systems charge primarily with renewable energy, and not fossil-generated energy or generic system energy taken for the grid, and thereby establish a consistent and coherent policy for the Commonwealth consistent with the express terms of the statute.

Sincerely,

A handwritten signature in blue ink that reads "Dennis J. Duffy".

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