



October 30, 2019

DELIVERED BY EMAIL TO [DOER.CPS@mass.gov](mailto:DOER.CPS@mass.gov)

Kara Sergeant  
Department of Energy Resources  
100 Cambridge Street, Suite 1020  
Boston, MA 02114

RE: PowerOptions Comments on Proposed Clean Peak Energy Portfolio Standard,  
225 CMR 21.00

Dear Ms. Sergeant:

PowerOptions, Inc. ("PowerOptions") is a not-for-profit energy purchasing consortium formed in 1996. Its over 400 nonprofit members in Massachusetts include hospitals and healthcare systems, colleges and universities, community and human service agencies, K-12 public and private schools, museums, as well as municipalities and housing authorities, with approximately 200 MWs of peak load. Our members often enter into multi-year arrangements with a competitive Retail Electricity Supplier for their electricity needs. The cost and stability of energy prices is critical for our members' ongoing operations.

PowerOptions provided comments in April 2019 on the Department of Energy Resources ("DOER" or "Department") Clean Peak Energy Standard Straw Proposal ("Straw Proposal"). Our comments then, and again now, focus on a narrow set of issues in the proposed regulations: (a) the need for grandfathering or exempting previously executed supply contracts with end use customers, and (b) the extent of Distribution Company competitive procurements for Clean Peak Energy Certificates ("CPECs").

A. Consumer Protections for Pre-Existing Competitive Supply Customers

On September 20, 2019, DOER filed a Notice of Public Comment on its proposed Clean Peak Energy Portfolio Standard ("CPS") Regulations, 225 CMR 21.00. The proposed CPS regulations establish the CPS Minimum Standard, 225 CMR 21.07(1). Each retail electricity product sold to an end-use customer by a Retail Electricity Supplier shall include a minimum percentage beginning with a minimum percentage of 1.5% in 2020. *Id.* There is no exemption or grandfathering language for previously executed competitive supply agreements with end use customers contained in the proposed CPS regulations. Notably, the statute exempts retail electric supply contracts signed on or before December 31, 2018, M.G.L. c. 25A, §17(a). Our members, however, have been signing electricity supply contracts throughout calendar year 2019 with no guidance on costs from DOER for CPS compliance by suppliers.

PowerOptions' members have entered into multi-year electricity supply agreements that currently do not account for the CPS. As explained by the Retail Energy Supply Association

(“RESA”) in its April 2019 comments on the Straw Proposal, “Only once the Department officially promulgates the regulations for the Program will suppliers modify their market positions and/or the terms of their agreements with customers to account for the Clean Peak Standard.” (RESA Comments on DOER Straw Proposal, April 12, 2019, at 7, emphasis added.) The market is complicated and suppliers cannot base end use pricing on speculative proposals. As RESA further explained, “since announced or even proposed regulatory revisions are subject to change based on legislative considerations as well as the regulatory input process, suppliers take market positions and enter into agreements based only on actual regulatory requirements officially promulgated by the governing regulatory authority.” (*Id.* at 6, emphasis added.) Accordingly, the fixed price electricity supply contracts that have been entered into by PowerOptions members to date do not contain the CPS expense. Any future price increases of pass-through costs by retail suppliers will go above and beyond these nonprofits’ anticipated contracting terms, impacting their budgets and operating expenses.

Thus, PowerOptions requests that the Department amend the proposed CPS Regulations to create a compliance exemption for retail load served under contracts executed prior to the date that the final Clean Peak Standard regulations are ultimately promulgated. This is consistent with prior agency practice for SRECs and the Clean Energy Standard. Retail Electricity Suppliers should provide the Department with satisfactory documentation of the terms of such contracts, as demonstrated by the Clean Energy Standard. See 310 CMR 7.75(5)(d).<sup>1</sup>

#### B. Long-Term Clean Peak Certificate Procurement by Distribution Companies

The proposed regulations require each Distribution Company to competitively procure and enter into long-term contracts for CPECs. 225 CMR 21.05(8)(a). Further, these CPEC procurements must be designed to achieve a target of up to 30% of the total market obligation of Retail Electricity Suppliers in a given Compliance Year. *Id.*

PowerOptions originally opposed the Straw Proposal’s contemplation of a procurement because of our concern that it would inhibit the maturation of a fledgling market and would impact the demand and supply balance necessary to create a sustainable market. We also expressed concern that the Distribution Companies have already procured a number of resources that will qualify for CPECs (e.g., through the Section 83C solicitations, and active demand management and storage initiatives from the three-year plans). We reiterate these concerns here, especially given the fact that the proposed regulation seeks to mandate long-term contract procurement to achieve an annual target of up to 30% of the total market obligation, a significant portion of the CPECs annually. Long-term contracts are not needed to stimulate the clean peak resources already in development. Further, long-term contracts by EDCs will distort the market

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<sup>1</sup> 310 CMR 7.75(5)(d). Treatment of Existing Contracts. 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.

by locking up resources and reducing the number of CPECs available to retail electricity suppliers, resulting in increased prices for customers. In order to encourage the development of an open and dynamic market for CPECs, the Department should not mandate long-term procurement by the Distribution Companies.

In conclusion, PowerOptions supports the Commonwealth's clean energy goals and appreciates the opportunity to comment on the proposed Clean Peak Energy Standard. PowerOptions requests that the Department create an exemption from compliance from the CPS for contracts signed before the effective final date of the regulations, as has been done previously for SRECs and the Clean Energy Standard. PowerOptions also requests that the Department think carefully about the size and scope of the proposed long-term procurement requirement by Distribution Companies in order to maintain a competitive and dynamic market for all retail suppliers and market-based costs for electricity customers.

Very truly yours,

A handwritten signature in blue ink that reads "Meg Lusardi". The signature is fluid and cursive, with the first name "Meg" and last name "Lusardi" clearly distinguishable.

Meg Lusardi  
Executive Vice President

