



Ridgewood Renewable Power

Stephen D. Galowitz
Managing Director

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Ms. Natalie Howlett, Renewable Energy Project Coordinator
Massachusetts Department of Energy Resources
100 Cambridge Street, Suite 1020
Boston, MA 02114

RE : Comments relative to DOER's proposed amendments to 225 CMR 14.00 – Renewable Energy Portfolio Standard – RPS Class I

Dear Ms. Howlett:

The following are the comments of Ridgewood Renewable Power to the DOER's proposed amendments to 225 CMR 14.00 – Renewable Energy Portfolio Standard – RPS Class I.

1. **The proposed change is contrary to law:** The proposed change to the regulations constitutes an inappropriate regulatory attempt to reintroduce a concept that was reviewed and specifically rejected by the Massachusetts legislature. The current law in Massachusetts relating to the renewable portfolio standard does not contemplate subjecting the output of new generating units to vintage limitations. Prior versions of Massachusetts law did contemplate the concept of vintage and this concept was reflected in prior versions of the regulations in Massachusetts.¹ However, the legislative history of the Green Communities Act demonstrates that this concept was abolished by the enactment of the Green Communities Act in 2008.
2. **The proposed change discriminates against ISO-NE generators:** This proposed change in regulations unfairly discriminates against renewable generating assets within the ISO-NE region since no similar vintage restrictions apply to renewable energy imported from generating units located outside the ISO-NE region. There is no policy basis for such discriminatory treatment. Indeed, if anything, generating assets located within ISO-NE should receive favorable treatment as compared with electric generation imported from outside the region.
3. **The proposed change discriminates against LFG generators that use private pipelines rather than common carriers:** This proposed change in regulations unfairly discriminates against generating projects that are fueled by landfill gas provided by a dedicated pipeline from an adjacent landfill. There is no comparable provision for applying vintage rules to a generating facility that uses landfill gas supplied by a common carrier pipeline. There is no policy basis for such discriminatory treatment. Accordingly, this proposed regulation would produce the following nonsensical result:

¹ For example, prior versions of the regulations applied the concept of vintage to certain facilities located at a landfill that was the site of Vintage Generation (e.g. former 225 CMR 14.05(d)(3)).

- a. **Vintage applies:** A newly constructed \$100 million electric generating facility is constructed utilizing no used equipment and fueled by landfill gas via a private pipeline from a proximate landfill that had been the site of Vintage Generation.
- b. **No vintage applies:** A 50 year old natural electric generating facility with no new equipment is fueled by “landfill gas” via a common carrier pipeline from a remote landfill that had been the site of Vintage Generation.

4. **The proposed change cannot be applied retroactively:** Even if the proposed change in regulations were to be adopted, it can not be applied retroactively to projects that had submitted an application for a statement of qualification under prior regulations that were in effect, outstanding, and constituted the law when the application was filed. Retroactive application of this rule would inflict substantial harm on projects that had relied on the existing regulations.

5. **The proposed change produces nonsensical results unsupportable by statute or policy:** One could possibly try to justify the concept of the proposed rule change as a means to prevent the owner of an existing landfill gas fueled Generation Unit from seeking to eliminate the vintage for the existing system due to a modest change to a facility. However, the proposed language is so broad that it would apply to a project that is not upgrading, or revamping, or expanding an existing Generation Unit but is completely decommissioning that Generation Unit and constructing, at great cost, an entirely new generating facility with state of the art equipment near the landfill upon which the prior Generation Unit was located. There is no reason to taint a landfill site simply because it had previously been the location of Vintage Generation. Such a draconian rule would limit investment in entirely new landfill development projects. For example, under the current rules, including the new rule should it be adopted, if two identical landfill gas fueled generating facilities are constructed at the same cost and utilizing 100% new components, there is no reason to penalize one facility simply because it happens to be located at a landfill that in the past hosted Vintage Generation. Even in cases where a generating facility includes some selected components from a prior facility it is appropriate to create a “safe harbor” exception where substantially all of the components of the facility are new.²

² The Internal Revenue Service has a long standing policy of recognizing that a facility is “new” if the fair market value of its used property is not more than 20% of the facility’s total value (the cost of the new property plus the value of the used property). See e.g. IRS Rev. Rule 94-31. Similarly, Rhode Island’s Renewable Energy Standard provides that a generating unit will be treated as new if it replaces its prime mover and 80% of the tax basis of its plant and equipment is derived from new capital expenditures. See RI RES Sec. 3.29.

6. **The proposed change was not accompanied by adequate public notice:** The public notice announcing the proposed change in the regulations was faulty and ineffective because it was limited to issues relating the solar carve out. By failing to mention or refer to this dramatic proposed change to the vintage rules, interested and affected parties were deprived of the opportunity to participate in the hearing and to submit comments.

Respectfully submitted,



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