Bay State Hydropower Association
55 Union Street
Boston, MA

July 25, 2019

By email to: DOER.RPS@mass.gov

John Wassam
Department of Energy Resources
100 Cambridge Street, Suite 1020
Boston, MA 02114

RE: Comments of the Bay State Hydropower Association Regarding Proposed Rulemaking by the Department to the Renewable Portfolio Standards for Class I and Class II.

Dear Mr. Wassam:

The Bay State Hydropower Association ("BSHA") wants to thank you and the Department for the opportunity to provide comments in the above referenced rulemaking proceeding.

Introduction

BSHA was established in 2007 to advance the use of hydropower, an indigenous and carbon free energy source in Massachusetts, and thereby positively support the economy, improve the environment, and contribute to emissions reductions in the Commonwealth – essential to the success of the Global Warming Solutions Act. The Association is comprised of hydropower facility owners and operators representing nearly 90 percent of the hydropower facilities in the state – many are small and often family-owned and operated.

An essential purpose of the Association is advocacy for programs and government action to support carbon-free hydropower energy including revenue enhancements and regulatory streamlining. Toward that end, the Association was instrumental in having hydropower recognized as an integral part of the Massachusetts Renewable Portfolio Standard, particularly for small hydro. For most small hydro facilities, the support provided by the RPS program is the difference between staying productive to generate emission-free power or simply closing down.

The Legislature agreed with the need to create this support mechanism for existing small hydro evidenced by enacting the Class II RPS program. Any threat to the support small

hydropower receives through the RPS would be contrary to the Legislature's commitment and intent and would severely and negatively harm members undermining their contribution to the Commonwealth's goals for emission reductions.

Background

On April 5, 2019 the Department of Energy Resources filed draft regulations with the Secretary of the Commonwealth affecting three existing sets of rules. They are: 225 CMR 14.00, Class I Renewable Portfolio Standard; 225 CMR 15.00, Class II Renewable Portfolio Standard; and 225 CMR 16.00, Alternative Energy Portfolio Standard. The amendments to the Alternative Energy Portfolio (APS) regulations were filed as emergency rules and were effective on the day they were filed with the Secretary subject to changes the Department might have after public comment.

Several public hearings were held across the state about the proposed rulemaking. Comments about the emergency APS rules were due on May 13, 2019 while the Department ultimately set a deadline for comments in the Class I and Class II RPS rulemaking for July 26, 2019.

Biomass Amendments

The proposed rulemaking relaxing provisions for wood burning has two problems. First, it commits the Commonwealth to expanding biomass generation that is unnecessary for power supply and ultimately may be uneconomical given transportation and other operational costs. Second, it has the potential to depress REC market prices, impairing much needed revenue support for clean hydropower.

Among other things, the proposed amendments to the existing RPS rules allow for a drop in the efficiency of a wood facility qualifying for RECs and allows for waivers of the efficiency standard depending on the wood-type fuel mix. Such changes rightly concerned many people testifying at the hearings who believe that this is a way for non-conforming wood to be burned. The existing rules this rulemaking would overturn were carefully crafted in a broad negotiation process, which included the Department, some years ago and reflect the findings of the Manamet study. No data have been presented to change the conclusions of that study to support these amendments to the Department's current rules in this area. In any event, the biomass changes invite greater participation in the REC marketplace for a non-renewable fuel.

In short, the Department should not change the biomass rules as proposed in this rulemaking because the changes are unsupportable in the context of the Commonwealth's

emission reduction goals, do not reflect the scientific understanding of wood as a renewable fuel, and have the very real potential to harm non-emitting renewable generation facilities.

Out-of-Region Importation Amendments

The proposed amendments would remove a number of provisions in the Department's rules that reflect the statutory requirements for renewable facilities outside the ISO control area to qualify for Massachusetts RECs. The statute states clearly that such out-of-region resources must adhere to a number of mandatory requirements. They are: that the power is actually delivered into the region and not round-tripped, that a non-intermittent renewable generating facility must commit its capacity only to the New England control area, and that it complies with applicable ISO-NE schedule and delivery rules as well as having a NERC tag.

The elimination of these provisions in the proposed rules creates confusion about the statutory mandates and does not reflect clearly an applicant's responsibilities to qualify. It is usually the case that agency rules incorporate, often word for word, provisions from the enabling statute that support the regulatory program. This provides one-stop clarity for those reading the rules. Here the opposite is taking place. The Department is removing its provisions that are required by the statute.

While streamlining rules is often important for regulatory efficiency and for reducing compliance costs, creating regulatory misperception as these proposed rules do in this area is counterproductive. Incorporating the statutory requirements into the language of the regulations, as the current rules do, helps to promote compliance by those who may not take the time to review the statute, as well for additional obligations.

The Association is particularly concerned that embedded in these changes is an opportunity – conscious or unconscious – for renewable power to enter the REC marketplace and impair the proper price formation for RECs notwithstanding such power supply may be violating statutory requirements. This, like the biomass issue discussed in these comments, has the potential for real harm to small hydropower facilities, cutting expected revenue necessary to maintain operations and equipment, as well as to support environmental safeguards that facilities undertake.

Finally, the Association is seriously concerned that on top of these proposed out-of-region changes, there appears to be no formal process in the proposed rulemaking for the Department to verify that an out-of-region renewable generator seeking or qualified for Massachusetts RECs has not committed its capacity elsewhere instead of with the New England

control area as required by law. For the integrity and reliability of the system, the Association urges the Department in this rulemaking to create such a verification process in its rules.

For the reasons stated here, the Department should not remove those parts of its own rules that reflect the complete set of requirements for an applicant to qualify out-of-region renewable power for REC sales in Massachusetts.

Safeguards Regarding Biomass and Out-of-Region Amendments

In the alternative should the Department adopt the proposed rules related to biomass and out-of-region renewable power, notwithstanding the Association's arguments that to do so would invite the potential of a market price collapse, the Association urges the Department to do two things.

- Adopt a method to quarterly track market prices as new biomass and/or out-of-region renewable generation enters the market, and

- Establish an automatic triggering mechanism to increase RPS demand when increased supply targets are reached.

These steps are essential to maintain market tension so that supplies do not go long which would have disastrous impacts on smaller hydropower in Massachusetts.

The Department's current process for adjusting REC purchase demand requirements lags market conditions by more than a year. This could lead to dramatic and prolonged swings in the value of RECs, having serious effect on the financial viability of many generators, especially smaller hydro facilities. Today's market adjustment mechanism lacks the short-term resolution to capture shifts in supply resulting from the changes proposed in this rulemaking that would have significant negative impact on REC prices and revenues for qualifying renewable generation, particularly small hydro. A reduction in RECs values can have an immediate and very harmful impact on small hydro facilities in the RPS program. A quarterly tracking system to quickly identify supply increases with an automatic triggering mechanism to increase demand would ensure market and revenue stability, so essential to smaller hydro in the RPS program.

Environmental Review – Sections 15.05 (6)(h) and 14.05 (6)(h)

In addition to the above, in this rulemaking the Department proposes to amend 225 CMR 15.05 (6)(h) and 225 CMR 14.05 (6)(h), respectively regulations affecting Class II and Class I

"qualified" facilities, to not require recertification by the Low Impact Hydropower Institute ("LIHI") for facilities that have received a LIHI certification and a Statement of Qualification from the Department.

The underlying enabling statute – Chapter 25A, section 11F - requires that a renewable hydropower facility must comply with certain environmental standards. The statute says a facility seeking "qualification" status:

> "... shall meet appropriate and site-specific standards that address adequate and healthy river flows, water quality standards, fish passage and protection measures and mitigation and enhancement opportunities in the impacted watershed as determined by the department in consultation with relevant state and federal agencies having oversight and jurisdiction over hydropower facilities, ... "

Pursuant to this statutory requirement, the Department adopted regulations that created a two-step process.[1] Firstly, a renewable hydropower facility seeking "qualification" from the Department of Energy Resources ("DOER") to enter the Renewable Portfolio Standard program must obtain "certification" from LIHI – complying with all its requirements.[2] Secondly, the applicant seeks "qualification" from DOER which may include further information from relevant state and federal agencies and the applicant.

In meetings with DOER officials during the run up to its rulemaking almost ten years ago and repeatedly afterward, BSHA questioned the choice of LIHI, a private non-governmental organization, as a mandatory part of the qualification process. The Association raised concerns about bias against hydropower by member organizations on the LIHI Board; standards applied to certification criteria that exceed the statutory provisions, which can change without formal proceedings and appeal rights under the Massachusetts Administrative Procedures Act; a recertification requirement that systematically re-evaluates eligibility irrespective of continued, on-going compliance; and unpredictable timing of certification action that can jeopardize facility financing and revenue. Over the years since the Green Communities Act was enacted and DOER adopted these regulations, extensive experience with the LIHI process has not calmed many of the original concerns.

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[1] The DOER regulations provide an alternative approach for when the applicant does not have LIHI certification or is denied certification, or when LIHI does not provide a response in 180 days from the date of submission. In those situations, the applicant can proceed directly to DOER for qualification status. For Class II these are found at 225 CMR 15.05 (6) (d) (ii) and (6) (f). Additionally, the existing DOER regulations provide that if LIHI cannot review a facility for certification that is in an adjacent control area to ISO-NE and is outside the United States, an independent third party acceptable to DOER can be used instead of LIHI.

[2] LIHI's standards have been changed over the years since DOER mandated certification by the LIHI. So too have the fees involved which require an annual payment to LIHI by the facility.

BSHA understands that at its most recent board meeting LIHI authorized a review of its processes, reflecting concerns raised by certificate holders and BSHA and seeking to improve its program. This review will include the formation of an *ad hoc* committee made up of stakeholders including hydropower facility operators. The review will also address the recertification issue – both the overall requirement for such and if required, the certificate term, recertification frequency and triggers. BSHA has indicated to LIHI management its willingness to participate actively in this effort. It should be pointed out, however, that the planned review effort carries no guarantees.

The adoption of the proposed addition of section 15.05 (6)(h) would eliminate the need for recertification. While required recertification has been a long standing concern of the BSHA members and its elimination could be valuable, it is not, in and of itself, a cure. Some fear it may have unintended consequences. It is also incomplete. If it were to be adopted, BSHA would suggest that a new provision be added to require an annual self-verification of compliance with the original or the existing certification terms as of the date of this filing, in the form of an e-mail sent to DOER. Indeed, there are other creative approaches that DOER should consider, such as the use of additional certifying organizations.[3]

The Association hopes that its concerns will be addressed satisfactorily during the planned LIHI review, which is to be completed in time to report to LIHI's October Board of Directors meeting which would result in a public comment process and subsequent adoption by the end of 2019. In the final analysis, DOER may yet need to alter its regulations, if LIHI is unable to address the concerns raised by BSHA. As DOER is the body responsible for requiring the use of LIHI in the RPS program's qualification process, DOER has an obligation to ensure that process is efficient, even-handed, and predictable.

Respectfully submitted,

Bay State Hydropower Association

Thomas Tarpey, President

[3] In this context, BSHA would request that where LIHI is unable to complete its certification process within the DOER-defined 180 days, that affected hydroelectric applicants be guaranteed the right to have DOER review their applications directly or submit their applications to an alternative independent, qualified reviewer, which would issue its review and opinion of the affected project's ability to meet the "appropriate and site-specific standards" of the Green Communities Act, in order for the Department to issue its final determination as to whether to "qualify" the facility.