



COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF ENERGY RESOURCES

**PROPOSED DRAFT CHANGES TO RPS
CLASS I, RPS CLASS II AND EMERGENCY
APS REGULATIONS**

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June 7, 2019

WRITTEN COMMENTS OF DIRECT ENERGY

On behalf of Direct Energy, one of the largest retail electricity and natural gas suppliers and energy-related services companies in North America¹, I hereby submit these comments to the Department of Energy Resources' ("Department" or "DOER") in response to its request for written comments pertaining to the filed draft regulations to amend portions of 225 CMR 14--*Renewable Energy Portfolio Standard – Class I* ("RPS Class I") and 225 CMR 15--*Renewable Energy Portfolio Standard – Class II* ("RPS Class II").

BACKGROUND

On April 5, 2019 the Department of Energy Resources, acting under statutory authority of Sections 11F and 11F1/2 of Chapter 25A of the General Laws, and in conformance with Chapter 30A of the General Laws, filed draft regulations to amend portions of 225 CMR 14-RPS Class I and 225 CMR 15--RPS Class II. These regulations require all retail electricity suppliers selling electricity to end-use customers in the Commonwealth to obtain specific minimum

¹ Direct Energy is wholly owned by United Kingdom-based Centrica plc, one of the world's leading integrated energy companies that operates in seven countries with more than 37,000 employees worldwide. With nearly five million customers, Direct Energy is one of the largest providers of electricity, natural gas, renewable energy and related services in North America.

percentages of their electricity supply from renewable energy generation sources. The proposed amendments revise the RPS Class I and RPS Class II regulations to address policy related changes, including changes required to implement Section 12 of Chapter 227 of the Acts of 2018, now codified at M.G.L. c. 25A, § 11F.

In the RPS Class II - *Compliance Procedures for Retail Electricity Suppliers* section of the Proposed Draft Regulations, the Department proposes changes to increase the RPS Class II Waste-to-Energy Alternative Compliance Payment (“ACP”) Rate. More specifically, the DOER proposes to increase the RPS Class II Waste-to-Energy ACP rate to align with the RPS Class II Renewable Energy ACP rate beginning in 2019. The Department asserts that this change will help improve revenues for Waste-to-Energy facilities for the period of 2019 through 2025, with half of the revenues earned by facilities designated to fund state recycling programs. The Waste-to-Energy ACP rate would be lowered to \$11.50/MWh beginning in 2026.

COMMENTS

Direct Energy is generally supportive of the Department’s overall public policy objectives associated with the proposed draft changes to the Massachusetts RPS Class I, RPS Class II, and Emergency APS Regulations, as filed. However, Direct Energy submits these written comments pertaining to a rather narrow but important issue associated with the unanticipated and substantial increase of the RPS Class II Waste-to-Energy ACP rate. We understand that the Department proposes to align the RPS Class II Waste-to-Energy ACP rate to align with the RPS Class II Renewable Energy ACP rate beginning in 2019. The Department asserts that this change will help improve revenues for Waste-to-Energy facilities for the period of 2019 through 2025, with half of the revenues earned by facilities designated to fund state

recycling programs. Direct Energy also understands the Waste-to-Energy ACP rate would be lowered to \$11.50/MWh beginning in 2026. In addition, the Department proposes capping the RPS Class II ACP rates at 50% of the RPS Class I rate (approximately \$35/MWh).

Direct Energy (and likely other retail suppliers) has change of law language in its contractual agreements that will allow the passing through of these cost increases to the end use customer. However, as a leading retail electricity supplier that provides complex and innovative electric commodity pricing to large commercial, industrial and institutional customers in the Commonwealth of Massachusetts, Direct Energy is fundamentally concerned about the unanticipated financial impact of the Waste-to-Energy ACP rate increase on these customers. It is important to note that the majority of our customers have contractual agreements with terms of service that range from two to five years in duration and thus, will be directly impacted by the proposed rate increase.

While we appreciate and recognize the Department's proposed action will reduce ratepayer exposure to higher future program costs and better align RPS Class II ACP rates with the RPS Class I ACP rate, Direct Energy respectfully suggests that the Department should be concerned about the immediate financial impact on customers that may be forced to absorb the substantial cost increases attributed to the Waste-to-Energy ACP rate for the period of 2019 through 2025. By way of illustration, Direct Energy provides several examples of the cost impact of the Waste-to-Energy ACP rate increase on several typical customer types (refer to chart below for details).

Customer	Annual MWhs	Current Obl	Proposed Obl	Previous Offer/REC	Current Offer/REC	Previous Cost (\$/MWh)	Current Cost (\$/MWh)	Annual Increase
Sm Manufacturer	9,000	3.50%	3.70%	\$7	\$25	\$0.25	\$0.93	\$6,120
University	75,000	3.50%	3.70%	\$7	\$25	\$0.25	\$0.93	\$51,000
Hospital	100,000	3.50%	3.70%	\$7	\$25	\$0.25	\$0.93	\$68,000
Lg Manufacturer	300,000	3.50%	3.70%	\$7	\$25	\$0.25	\$0.93	\$204,000

As the Department will certainly appreciate, the cumulative financial impact for the period of 2019 through 2025, as well as the negative customer experience of invoking change of law that results in incremental costs is clearly not the paradigm of a well-functioning competitive retail electricity market. Moreover, while the change of law provision is clearly delineated in our contractual agreements, once exercised, Direct Energy believes the passing through of these unexpected cost impacts may sour some customers on the benefits of the competitive market. Moreover, we believe it will also have a chilling effect on the economic development climate in the Commonwealth as customers, many whom are state, municipal and public-sector counterparties, will inevitably be required to pay the incremental cost. These unintended consequences are clearly not desirable. Direct Energy thinks there is a better way that supports those customers that believe in the benefits of a competitive retail electricity market.

As with existing RPS and related clean energy compliance regulations in the Commonwealth² as well as in other state jurisdictions around the United States, Direct Energy believes that customers with existing competitive contracts should be exempt from any incremental cost increase from the newly imposed regulatory change(s) for length of their

² Massachusetts Chapter 227 of the Acts of 2018 signed into law by Governor Charles Baker on August 9, 2018. Among other requirements, Chapter 227 accelerates the Renewable Portfolio Standards over a ten-year period but included important exemption language: *“Any electric load served under a retail electricity supply contract executed or extended not later than December 31, 2018, shall be exempt from any incremental compliance obligation under this section that occurs as a result of an increase or a new requirement imposed on or after January 1, 2019 on the minimum percentage of kilowatt-hour sales to end-use customers that must be derived from Class I RPS eligible resources”*. Moreover, Chapter 227 requires electricity suppliers to source a percentage of their sales from clean energy resources to reduce peak demand. The Clean Peak Standards requirement also included exemption language that stated: *“Every retail electric supplier providing service under contracts executed or extended after December 31, 2018, shall provide a minimum percentage of kilowatt-hour sales to end-use customers in the commonwealth from clean peak resources”*.

existing contract term. Therefore, Direct Energy encourages the Department to adopt a two-tiered system regarding the applicability of Waste-to-Energy ACP rate.

Direct Energy proposes that those customers with existing contracts should continue to be subject to the “old” Waste-to-Energy ACP rate (\$11.56/MWh for CY 2019 subject to the annual CPI increases) until the termination of their original contract term. By way of example, if a commercial customer in the Commonwealth has a three-year contractual agreement that commenced on October 1, 2018, that customer would be subject to the “new” (higher) Waste-to-Energy ACP rate beginning October of 2021 (end of the original contract term) for the balance of the remaining period through the end of CY2025.

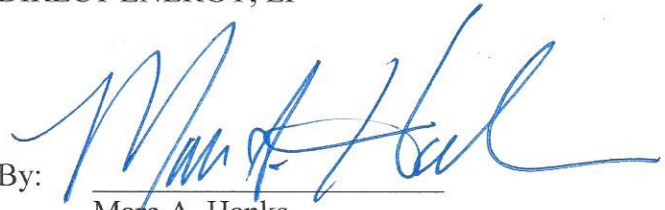
The second tier would require all new contractual agreements to be immediately subjected to the conditions of the proposed draft regulations for the period of 2019 through 2025. With full knowledge and insight into new compliance requirement, retail suppliers will have the transparency and thus, ability to embed the incremental cost of the new Waster-to-Energy ACP rate into their pricing models and into the end use customer retail rates.

CONCLUSION

As customers of retail electricity suppliers are already subjected to a myriad of renewable and clean energy compliance requirements in the Commonwealth, it is important that the DOER recognize the financial impact of the unanticipated increase of the Waste-to-Energy ACP rate for the period of CY 2019 through CY2025. Therefore, Direct Energy respectfully urges the Department to amend its proposed draft regulation that will allow those customers with existing competitive electricity contracts to be exempt from the new Waste-to-Energy ACP rate for the term of their existing contract. Thank you.

Respectfully Submitted,
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