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June 7, 2019

Via E-Mail (as specified below)
& Hand Delivery

John Wassam, as specified, via DOER.RPS@mass.gov
On behalf of:
Judith Judson, Commissioner
Massachusetts Department of Energy Resources
100 Cambridge Street, Suite 1020
Boston, MA 02114

Re: Proposed RPS Class I & II Rulemaking, implicating 225 CMR 14.00 and 225 CMR 15.00, issued by the Commonwealth of Massachusetts Department of Energy Resources ("DOER") on April 5, 2019 (the "Draft Regulation")

Dear Commissioner Judson and Mr. Wassam:

On April 5, 2019, DOER issued the Draft Regulation, requesting comment until June 7, 2019.¹ The Draft Regulation, as well as DOER's contemporaneously issued stakeholder overview², proposed changes to Solar Renewable Energy Credit program (the "SREC Program"), some deliberately retroactive.

On behalf of our clients and their various affiliates (involving multiple solar projects within the Commonwealth), we appreciate the opportunity to provide these comments ("Comments"). We respectfully submit that the cited element of DOER's Draft Regulation (the "SREC I reversal") is not consistent with the Commonwealth of Massachusetts's (the "Commonwealth") aspirations for cost-effective electricity pricing, goals for its innovation economy, or remedies for climate change. The SREC I reversal also is not legal, owing both to DOER's failure to abide the statutory mandates of the General Court (the "Legislature") and to ensure that the SREC I

¹ The comment extension is reflected in DOER's notice and states in its entirety: "Written comments on the RPS Class I and RPS Class II Regulations will be accepted until 5 PM on June 7, 2019." DOER, RPS Class I & II Rulemaking ("DOER's Notice"), available at <https://www.mass.gov/service-details/rps-class-i-ii-rulemaking>.

² E-mail from Judith F. Judson, Commissioner, DOER to RPS/APS Stakeholders (Apr. 11, 2019) ("DOER Stakeholder Outreach"). The DOER Stakeholder Outreach is attached hereto as Exhibit A.

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reversal is not retroactive in effect. For all of these reasons, we respectfully request retraction of the SREC I reversal.

These Comments are organized as follows:

- An Executive Summary immediately follows this introduction.
- A Background section, with an overview of the SREC I reversal and historic DOER policy in interpreting SREC allocation timeframes, follows the Executive Summary.
- A Discussion section follows the Background section, and makes two primary points:
 - Because the SREC I reversal undermines reasonable solar sector and investor expectations grounded in consistent historic DOER policy, it necessarily impedes the Legislature's directives on solar expansion, the Commonwealth's innovation and economic priorities, not to mention climate change goals, with no demonstrable or credible economic benefit to electricity consumers.
 - The Draft Regulation is illegal, substantively and procedurally.

EXECUTIVE SUMMARY

As detailed below, it is now beyond cavil that innovation drives regional economic vitality, and that the solar sector is a critical contributor to the Commonwealth's clean energy innovation economy.

As a policy matter, the SREC I reversal cannot be reconciled with:

- The directives of the Legislature, including via its Net Metering and Solar Task Force (the "Task Force"), to support the solar sector as an engine of growth in the Commonwealth economy. We are particularly concerned that the SREC I reversal, because it so clearly contravenes consistent DOER policy under which solar projects were structured and developed, not only will have a chilling effect on the solar sector, but also undermine investor confidence in the Commonwealth's clean energy innovation sector.
- The credible evidence that renewables stabilize wholesale pricing, particularly the effects of volatile electricity pricing unduly dependent on natural gas markets, as in the Commonwealth. Further, if the cost and benefits of the SREC I reversal were properly assessed, DOER's unsupported claim of theoretical cost savings (of \$150 million) would resonate as trivial, dwarfed by the holistic benefits of the SREC Program to the

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Commonwealth economy and its residents, including benefits experienced by electricity consumers or ratepayers.³

- A viable plan for meeting reductions in greenhouse gas (“GHG”) emissions designed to advance climate change aspirations that, in the Commonwealth, are increasingly (including as a result of regional nuclear retirements) dependent on renewables.

As a legal matter, the SREC I reversal is neither authorized by, nor can be reconciled with, the Legislature’s directives in the governing statutory regime, a fatal flaw.⁴ Further, because the SREC I reversal is both retroactive and contradicts longstanding DOER guidance to the solar sector and its investors, the Draft Regulation will be reviewed by the Commonwealth courts under a well-developed, searching standard of judicial review that it cannot survive.

For these reasons and as detailed below, we respectfully request retraction of two additions to the specified sections of the Draft Regulation that constitute the SREC I reversal, thereby retaining the existing treatment of SREC I projects.

BACKGROUND

Summary of the Draft Regulation

The SREC Program originated in the Green Communities Act (2008), creating a so-called carve-out or mandate in the Commonwealth’s Renewable Portfolio Standard (“RPS”) to include solar projects that DOER specifically approves as qualifying under the original SREC Program, known as SREC I, and its successor program, known as SREC II.⁵

The SREC Program regulations promulgated by DOER are found at 225 CMR Part 14.00 and 15.00. Qualifying projects sell SRECs in multiple ways, e.g., by contract, but also in so-called clearinghouse or “fixed price” auctions, which are designed to provide a form of SREC price

³ See, e.g., Net Metering and Solar Task Force, *Final Report to the Legislature*, 128-129 (2015) (“Task Force Report”) (articulating the importance of the solar sector), available at <https://www.mass.gov/files/documents/2016/08/nq/final-net-metering-and-solar-task-force-report.pdf>.

⁴ See, e.g., Act of Apr. 11, 2016, ch. 75, § 10, Mass. Acts (“[A]ny renewable energy generating source using solar photovoltaic or solar thermal electric energy that has previously qualified for programs pursuant to subsection (g) of section 11F of chapter 25A of the General Laws and applicable regulations, as determined by the department of energy resources *shall continue to be* subject to and receive benefits from said programs, including, but not limited to, the solar carve-out program and its successors, pursuant to the requirements of 225 CMR 14.00.”) (emphasis added).

⁵ Green Communities Act, ch. 169, § 83, 2008 Mass. Acts.

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support. Recognizing the value of auction-based price supports, SREC I projects may participate in auctions for only forty (40) calendar quarters or ten (10) years, known as the Opt-In Term. However, and critically, although their time in the price-support auctions is limited, qualifying SREC I projects can continue to create SRECs for sale outside of the auction process until the SREC I program ends, which has not occurred.

Sections 14.06(3)(e and f) of the Draft Regulation, with underlining reflective of the proposed regulatory changes, constitute the SREC I reversal and state:

(e) The length of the Opt-in Term shall be 40 quarters for all Solar Carve-out Renewable Generation Units that receive a Statement of Qualification.

(f) Starting in the calendar quarter after the end of a Solar Carve-out Renewable Generation Unit's Opt-in Term, it shall no longer be eligible to generate Solar Carve-out Renewable Generation Attributes, but will remain qualified to generate RPS Class I Renewable Generation Attributes.⁶

The Solar Carve-out Renewable Generation Attribute is defined as “[t]he Generation Attribute of the electrical energy output of a specific Solar Carve-out Renewable Generation Unit that derives from the Generation Unit's production of Solar Carve-out Renewable Generation.”⁷

The effect of the proposed language in the SREC I reversal is to limit, *after such projects were approved for participation in the SREC Program under an assumption that SREC generation would continue after the Opt-In Term*, the eligibility for such projects to receive SRECs. If the SREC I reversal is promulgated in final form, this retroactive loss of SRECs will occur, despite the fact that participating projects necessarily have relied on the availability of SRECs in establishing project fundamentals, including equity and revenue allocations that drive project financing.⁸

⁶ Draft Regulation, 225 C.M.R. § 14.06(3)(e)-(f) (proposed Apr. 5, 2019).

⁷ *Id.* § 14.02.

⁸ Despite the relative novelty of SREC trading and the various differences in state programs, SRECs are widely acknowledged to dramatically affect solar project revenues and therefore financing or underwriting, particularly at scale. *See, e.g.,* Karlynn Cory, *et al.*, *Solar Photovoltaic Financing: Deployment on Public Property by State and Local Governments*, National Renewable Energy Laboratory (“NREL”), Technical Report NREL/TP-670-43115 (2008) (“SRECs are increasingly critical for structuring the financing of new solar PV projects.”), available at <https://www.energy.gov/sites/prod/files/2014/05/f15/43115.pdf>; Lori Bird, *et al.*, *Solar Renewable Energy Certificate Markets: Status and Trends*, NREL, Technical Report NREL/TP-6A20-52868 (2011) (identifying SRECs as the “primary incentive stream for financing systems” and their challenges), available at <https://www.nrel.gov/docs/fy12osti/52868.pdf>; Aaron Chew, *Getting SREC Policy Right*, Renewable Energy World (June 15, 2010) (“First and foremost, their [SRECs] express purpose is to maximize the adoption of solar power in a given market at the lowest cost to society.”), available at <https://www.renewableenergyworld.com/articles/2010/06/getting-srec-policy-right.html>.

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DOER's position with respect to the Draft Regulation is that it is providing a clarification, "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--Renewable Energy Portfolio Standard – Class I ("RPS Class I") and 225 CMR 15--Renewable Energy Portfolio Standard – Class II ("RPS Class II"), and specifically that "[t]he proposed amendments revise the RPS Class I and RPS Class II regulations to address policy related changes, including changes required in order to implement Section 12 of Chapter 227 of the Acts of 2018, now codified at M.G.L. c. 25A, § 11F."⁹

DOER Policy on SREC allocation

We respectfully disagree that the SREC I reversal amounts to a clarification of prior DOER policy. For almost a decade, DOER consistently has advised the solar sector and its investors that there is no limit on SREC generation, including beyond the Opt-In Term designed solely for clearinghouse auction participation. For instance, in its December 19, 2009 (just before the SREC I program was added), DOER held a webinar, with an associated question and answer session. In that process, DOER stated:

Q: Is there a limit to the number of years a project will generate SRECs, beyond the opt-in term?

A. *There is no pre-set number of years during which a project will generate SRECs.* However, the Regulation at 225 CMR 14.07(2)(i) and (j) specify the process by which DOER will determine when the Solar Carve-Out Minimum Standard and the auction process will come to an end. The determination will be based on the achievement of 400 MW of Carve-Out qualified PV installation in Massachusetts and the longest remaining auction Opt-In Term for any Carve-Out qualified Units but will be lengthened to accommodate the shelf-life on any re-minted SRECs.

Q: *Do projects generate SRECs beyond the opt-in term, which can be sold on the market (not in the auction)?*

A: *Yes.* However, the generation of SRECs will end eventually. *That end will not occur before the Opt-In Term of all PV projects has ended (see the answer to the previous*

⁹ See, e.g., DOER's Notice, *supra* note 1 (emphasis added); see also DOER Stakeholder Outreach, *supra* note 2 at 3 ("DOER proposes clarifying that SREC I facilities may not continue to generate SRECs after the first 40 quarters in which they are eligible. DOER estimates this change has the potential to provide over \$150 million in cost savings to ratepayers from 2020 - 2023 by transitioning SREC eligible projects to Class I RECs sooner.")

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question). After the termination of the SREC program, solar projects will continue to generate RECS for compliance in the RPS Class I market.”¹⁰

Three years later, in its December 18, 2012 presentation, DOER doubled down on this official regulatory policy or position, underscoring that its goal was to ensure “market stability,” among other benefits:

How long will my project generate SRECs?

– *Your project will generate SRECs from the time it is qualified until the program ends.*

When does the program end?

– After we have reached the program cap of 400 MW of qualified projects installed, DOER will determine and announce the remaining duration of the program, which will be equal to the longest remaining opt-in term. After the end of the Solar Carve-Out program, the qualified units will be merged into the RPS Class I program and thereby continue to generate Class I RECs.¹¹

DOER’s existing, not to mention sensibly market savvy, policy should continue, with retraction of the SREC I reversal that upends DOER’s longstanding guidance to the solar sector and its investors.

DISCUSSION

I. The SREC I reversal contravenes the Commonwealth’s clean energy innovation and climate change goals, at no discernible benefit to ratepayers, creating regulatory uncertainty that is damaging to both.

We start with the largely uncontroversial twin propositions that: (1) the benefits of innovation, including specifically those benefits advanced through the solar sector, to the Commonwealth and its residents are significant and diverse, and (2) good policy – in the form of regulations --

¹⁰ DOER, *Answers to questions from the 12/18/09 Webinar*, 2 (emphasis added), available at <http://www.grotonelectric.org/wp-content/uploads/2013/07/Questions-on-SREC.pdf>; see also DOER, *Solar RPS Carve-Out* (2010), at 8 (describing Opt-In Term), at 9 (“The Solar RPS Carve-Out program remains in effect until such time as all the Auction Opt-In Terms of the qualified projects have expired, and the full Shelf Life years of the Extended Life SRECs have expired, thereby maintaining the price certainty promised to all solar generators.”) and at 15 (“Qualified projects generating beyond their Auction Opt-In Terms are not provided the minimum price support of the auction, and will enable compliance to be met with SRECs trading at below the fixed auction price.”) (emphasis added), available at <https://www.mass.gov/files/documents/2016/08/pm/solar-webinar-2009dec18.pdf>.

¹¹ DOER, *Massachusetts Solar Carve-Out (SRECs)* (2012), 22 (emphasis added), available at <https://www.mass.gov/files/documents/2016/08/rf/srec-presentation.pdf>.

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can facilitate the solar sector's success or failure. We address these arguments below, in reverse order, underscoring the importance of regulatory certainty to innovation economies, including the Commonwealth's.

In this context, we are concerned that the SREC I reversal is a form of regulatory flux that puts at risk the solar sector and its important contributions to the Commonwealth innovation economy, to climate change solutions and to the economic well-being of Massachusetts residents that stable, affordable electricity pricing advances. Each of these points is also addressed below.

A. Regulatory certainty is critical to clean energy innovation economies, including the Commonwealth's economy.

The use of regulation to drive innovation, as a significant determinant of economic growth and environmental health (as detailed in Sections B and C below), has been axiomatic for more than three decades, as is the corollary principle that regulatory certainty is a necessary attribute of effective governance.¹² This is particularly true within the electricity sector for utility-scale generation assets, with its long timelines, not to mention complex, costly financing processes.¹³ It is doubly true in the nascent or emergent clean energy sector, where small to medium sized enterprises, and pioneering investors, must make their way in novel regulatory regimes. In the cogent articulation of the World Economic Forum:

[T]he regulatory policy framework is *the most important catalyst* to accelerating sustainable energy innovation by incentivizing investments. However, it needs to be credible because *investments are highly sensitive to perceptions regarding the credibility of future policy commitments*.¹⁴

¹² See, e.g., Nicholas A. Ashford, *et al.*, *Using Regulation to Change the Market for Innovation*, 9 Harvard Env't. L. Rev., 419-466 (1985), available at <https://core.ac.uk/download/pdf/4379261.pdf>.

¹³ A particularly accessible point of view is provided in Samantha Gross, *Far from the White House, the Energy Industry Remains Focused on Climate*, Brookings (March 14, 2017), <https://www.brookings.edu/blog/planetpolicy/2017/03/14/far-from-the-white-house-the-energy-industry-remains-focused-on-climate/> ("Additionally, the energy industry assets are long lived. Four or even eight years is a short time when you are making investment decisions about assets that will last for decades, and investors need to consider how policy may change over the life of an asset."); see also Mahdi Shah Nazari, *et al.*, *Climate Policy Uncertainty and Power Generation Investments: A Real Options CVaR Portfolio Optimization Approach*, in 75 Energy Procedia, 2649-2657 (2015) (acknowledging and addressing the investment risk of regulatory uncertainty), available at <https://www.sciencedirect.com/science/article/pii/S1876610215011352>.

¹⁴ World Economic Forum and KPMG, *Accelerating Sustainable Energy Innovation*, 13 (2018) (emphasis added), available at http://www3.weforum.org/docs/Accelerating_sustainable_energy_innovation_2018.pdf; see also Gregory F. Nemet, *et al.*, *Four Decades of Multiyear Targets in Energy Policy: Aspirations or Credible Commitments?*, Wiley Interdisciplinary Reviews, 3 Energy and Environment 522-533 (2014) (same).

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The Commonwealth is not, and has not perceived itself to be, an exception to prevailing global innovation economics. To the contrary, the Task Force expressly recognized the need for effective policy to advance the solar sector and implement the program that the Legislature envisioned:

[S]olar market development has been largely dependent on state-level policies in the United States. ... *Additionally, state-level targets and incentives have been a major driver of solar market development to date.* The analysis also shows that states without robust solar incentives and targets, but adequate solar potential, have seen very limited market growth compared to similar states with solar incentives and binding targets. This suggests that, for the time being, state-level solar policies are *critical* to future solar market growth in the U.S.¹⁵

Presciently, the Task Force recognized its obligation to drive a solar sector expansion and the salutary effect on developers of regulatory certainty, underscoring the chilling effect of retroactive change:

Continued growth of the solar market in the Commonwealth requires ... regulatory certainty. *Developers and investors will not bring their business to Massachusetts if they are not confident that the deals they strike and commitments they make will be honored. While it is appropriate for the solar policy framework to evolve as the solar industry matures, program and compensation mechanism changes must apply prospectively.*¹⁶

To be clear on what is at stake, as of 2017, Class I and II Solar Carve-Outs account for 99.6% of installed capacity.¹⁷ Given widespread SREC Program participation, inapt and non-prospective (or retroactive) changes to the SREC program, as reflected in the SREC I reversal, reasonably should be expected to chill or even destabilize the Commonwealth's solar sector and, likely with it, the larger clean energy innovation economy. Indeed, we do not have to wonder whether developers and investors view the retroactive SREC I reversal as shaking their foundational understanding of the critical regulatory structure underpinning the solar sector; its participants

¹⁵ Task Force, *supra* note 3, at 5 (emphasis added).

¹⁶ *Id.* at 38 (emphasis added).

¹⁷ Massachusetts Clean Energy Center ("MCEC"), 2018 Massachusetts Clean Energy Industry Report, 6 ("MCEC Report"). Troublingly, utility-scale projects continue to lag, perhaps another indicator of the effects of regulatory flux on the largest projects with the most complex financing dynamics. *Id.*

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already have weighed in on the profoundly negative effects of the SREC I reversal, however well-intentioned.¹⁸

For this reason and in sum, the SREC I reversal not only and predictably undermines DOER's credibility, but also adversely affects developer and investor perceptions of the Commonwealth's commitment to the solar sector and, with it, the clean energy innovation economy.¹⁹

B. The solar sector is essential to the Commonwealth's innovation economy.

The chilling effect of the SREC I reversal is not only non-trivial for the solar sector, but should be expected to reverberate even beyond the Commonwealth's clean energy innovation economy. Innovation, including clean energy innovation, drives regional prosperity – particularly in the Commonwealth -- in clear, measurable and important ways.²⁰ The economic value of the Commonwealth's innovation economy is ubiquitous and shared by Commonwealth citizens, with the clean energy gross state product, which as a nascent sector increased by more than 15% from 2016 to 2017, approximating \$13.2 billion.²¹

The solar sector plays an undisputed role in the larger clean energy innovation economy, here, in the Commonwealth. Indeed, acknowledging the decisive role of the solar sector, the Legislature established the Task Force of energy industry experts to “*make recommendations to the general*

¹⁸ See, e.g., MassSolar, *Shortchanged: DOER proposes to cut solar eligibility for existing solar projects*, (May 6, 2019), <http://solarisworking.org/blog/shortchanged-doer-proposes-to-cut-srec-i-eligibility-period-for-existing-solar-projects> (“If finalized, these changes will deprive homeowners, businesses, municipalities, and others that invested in solar with the expectation of receiving SRECs beyond the first 40 quarters of the incentive revenue they were entitled to receive as per the original SREC regulations. *Such mid-program changes are likely to have bigger consequences for the solar industry, undermine confidence in the solar market, and erode trust in Massachusetts' regulatory agencies.*”) (emphasis added).

¹⁹ This is not to say that all regulatory change is necessarily problematic. Our far narrower position is that, viewed holistically, retroactive change to settled policy on which the sector has relied is precisely the form of inapt regulation capable of destabilizing the nascent clean energy sector in the Commonwealth, an effect that we suggest offsets any perceived incremental “savings” to customers (as detailed in Sections I.B and I.C).

²⁰ See, e.g., MCEC Report, *supra* note 16 at 7 (stating the Northeast employs 48% of the clean energy workforce and Massachusetts has the second highest percentage of clean energy works of the 50 states, with clean energy employment having grown 84%, or by approximately 50,500 jobs, since 2010); see also Ryan Nunn, et al., *The Geography of Prosperity*, Brookings (2018), (correlating advanced innovation as drivers of regional community prosperity, measured by county, from 1980-2016, using standard vitality metrics of regional community prosperity, e.g., median household income, poverty rates, life expectancy, housing vacancy rates, etc.).

²¹ MCEC Report, *supra* at 6-7.

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*court to encourage the continued expansion of solar generation in the commonwealth.*²² In other words, the Legislative direction to DOER is continued expansion, within reasonable limits, of the solar sector. The SREC I reversal cannot be reconciled with this mandate.

Presaging the MCEC's 2018 Clean Energy Industry Report, the Task Force estimated that the SREC Program, as it then existed in 2014 (without the SREC I reversal that DOER now proposes), would achieve net benefits of \$7.0-\$8.98 billion to Commonwealth residents over 25 years.²³ Thus, and importantly, it is this scale and quality of net benefits that must underpin our assessment of the purported "cost savings" that DOER assumes in connection with the SREC I reversal, incremental dollars that we suggest are neither "savings," nor credibly documented by DOER (as detailed in Section I.C).

C. *The Draft Regulation does not create "savings" for electricity consumers.*

DOER operates under the assumption that the SREC I reversal will produce "cost savings" to consumers of approximately \$150 million in the three-year period from 2020 through 2023.²⁴ DOER is doubly incorrect. First, savings is a misnomer; at best, the SREC I reversal is a wealth transfer from solar developers and investors to consumers. Second, DOER has not established that consumers, in fact, will realize any savings in electricity pricing. This is because DOER's claim of "savings," which is nowhere demonstrated, fails to appreciate and calculate the real costs of its actions on electricity pricing and the solar sector's contributions to the Commonwealth economy. As detailed below, the SREC I reversal's chilling effect on the solar sector should be expected both to adversely effects electricity pricing and upset the innovation economy that affords the Commonwealth its privileged prosperity, in each case dwarfing the theoretical "savings" to consumers asserted in DOER's Stakeholder Outreach. Both points are addressed below.

Informed, independent, expert assessment of solar power is that the effective deployment of solar installations, particularly at utility scale, advances lower wholesale market pricing and therefore

²² Act of Aug. 6, 2014, ch. 251, § 7(a), Mass. Acts (emphasis added); *see also* Task Force Report, *supra* note 3 at 128-129.

²³ Task Force Report, *supra* note 3 at 128-129.

²⁴ DOER Stakeholder Outreach, *supra* note 2.

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reduced costs to electricity consumers, including ratepayers.²⁵ This is particularly the case, where negative pricing tariffs exist, as they do in the Commonwealth.²⁶ Indeed, a recent (late 2018) assessment prepared by the Solar Energy Industries Association and the American Wind Energy determined that renewables reduced wholesale power costs to Texas by \$5.7 billion, in the process stabilizing electricity pricing.²⁷ The Commonwealth's disproportionate reliance on natural gas infrastructure and the loss of regional nuclear units may make the role of renewables even more important as a stabilizing factor in electricity markets. Certainly, we are aware of no rational basis for DOER to reject, particularly without explanation, the industry consensus that renewable energy, particularly utility-scale solar, plays a critical role in supporting affordable, stable electricity pricing.

Viewed in this light, to conclude that there will be "savings" to ratepayers in the manner asserted by DOER in the Stakeholder Outreach, the agency would have to: (1) have performed an analysis of the role of the renewables in Commonwealth electricity market pricing, demonstrating that renewables in the Commonwealth play a negligible role in advancing affordable, stable electricity pricing, or (2) demonstrated that the SREC I reversal does not have a chilling effect on that solar market that otherwise confers electricity market pricing benefits to consumers. No such analyses or demonstrations are included, or even referenced, in the Draft Regulation or the Stakeholder Outreach, and therefore cannot be assumed. Nor do we believe it is likely to be shown, for the reasons set forth in this Section.

In any event, DOER's blinkered approach omits the larger, material economic benefits of the solar sector to Commonwealth residents, effectively isolating and exaggerating the three years of theoretical ratepayer "savings" which DOER suggests – but does not demonstrate -- will result.

²⁵ See, e.g., E. Ela, et al., , *Evolution of Wholesale Electricity Market Design with Increasing Levels of Renewable Generation*, NREL and Argonne National Laboratory, Technical Report NREL/TP-5D00-61765, p. x (2014) ("With increased penetrations of [variable generation (e.g., wind and solar)]—which are likely to offer energy at near-zero, zero, and negative-bid costs— *both the average energy prices and the cleared energy levels of existing generating plants are likely to be reduced.*") (emphasis added), available at <https://www.nrel.gov/docs/fy14osti/61765.pdf>

²⁶ *Id.*

²⁷ TXP and IdeaSmiths, *The Economic Value of Renewable Energy in Texas*, (Nov. 2018), available at <https://www.txrenewables.org/>.

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A meaningful rulemaking-related cost-benefits type of assessment²⁸, which DOER does not provide, would identify, assess and, perhaps, monetize benefits beyond the assumed short-term wealth transfer from the solar sector to electricity consumers. Indeed, a more grounded, credible and searching analysis, *if it had been performed by DOER as it was by the Task Force*, would have underscored the multi-faceted, multi-lateral economic benefits of renewable energy, a counterpoint to the notion that short-term ratepayer “cost savings,” alone, should control. Even if DOER properly declined to perform a more complete, correct and credible assessment, there is no avoiding the fact that regulatory flux alone, as discussed in Section I.A. increases the actual and social cost of clean energy or carbon mitigation investment.²⁹

In short, DOER’s SREC I reversal sends a message that DOER both lacks a realistic sense of, or a sense of responsibility for, the solar sector’s role in electricity market, and has advanced a blinkered view of “cost savings” at a long-term cost to the Commonwealth’s electricity ratepayers and economy, alike. We respectfully submit that retraction of the SREC I reversal is the more – and perhaps only -- credible approach.

D. The solar sector is essential to the Commonwealth’s ability to meet Climate Change mandates.

Even setting aside the critical value to affordable electricity and the Commonwealth’s innovation economy of the SREC program, the Commonwealth’s longstanding, committed position to

²⁸ While the Commonwealth recognizes and employs benefit-cost analysis in many and diverse arenas, we are not suggesting that it is mandatory here. Our more narrow position is that any calculation of benefits, as DOER has done in connection with the Draft Regulation, must be reasonably complete to be credible. *See, e.g.,* Massachusetts Energy Management Agency, *Benefit Cost Analysis (BCA)*, <https://www.mass.gov/service-details/benefit-cost-analysis-bca> (“Benefit-cost analysis (BCA) is a standardized, systematic way to measure all of the significant direct benefits of a mitigation project against the costs. A BCA always involves looking at damages and losses twice: before mitigation (the ‘as-is’ situation) and after mitigation.”). In a pinch, of course, DOER simply could have employed the Task Force’s cost-benefit assessment. *See* Task Force Report, *supra* note 3.

²⁹ *See, e.g.,* Peter S. Reinelt and David W. Keith, *Carbon Capture Retrofits and the Cost of Regulatory Uncertainty*, 28 Energy J. 101-128 (2007) (“*We find that interaction of regulatory uncertainty with irreversible investment always raises the social cost of carbon abatement.* Further, the social cost of regulatory uncertainty is strongly dependent on the relative competitiveness of IGCC plants, for which the cost of later carbon capture retrofits is comparatively small, and on the firm’s ability to use investments in natural gas generation as a transitional strategy to manage carbon regulation uncertainty. Without highly competitive IGCC or low gas prices, regulatory uncertainty can increase the expected social cost of reducing emissions by 40 to 60%.”) (emphasis added).

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countering climate change rests heavily on renewables development.³⁰ Because renewables are a critical aspect of the Commonwealth's package of climate change solutions, it stands to reason that destabilizing the solar sector will impair the Commonwealth's success in advancing GHG emissions reductions and climate resilience. In other words, a collateral effect of the SREC I reversal is that it reasonably can be expected to impede the Commonwealth's climate change goals.

Such setbacks may be no small matter, given the magnitude of the climate risk to the Commonwealth. Indeed, the current Administration's Executive Order 569 classifies climate change as "a serious threat to the environment and the Commonwealth's residents, communities, and economy," and "a serious threat to public safety, and the lives and property of our residents," in the process underscoring DOER's obligation to reduce GHG emissions through deployment of clean energy.³¹ The Administration's efforts fall within a comprehensive, legally enforceable statutory framework requiring the Commonwealth to reduce its GHG emissions by at least eighty percent below 1990 levels by 2050.³² That framework requires reductions of annual GHG emissions that is "actual, measurable, and permanent."³³

Actual, measureable, permanent GHG reductions depend at least in part on renewable energy production, typified by the solar sector. Indeed, the overarching premise of the very statute on which DOER relies for its Draft Regulation, i.e., An Act to Advance Clean Energy, 2018 Mass. Acts c. 227, signed on August 9, 2018 by Governor Baker, is that driving electricity portfolio diversification – particularly, through the use of renewables lead by the solar sector – is essential to meeting the Commonwealth's goals for GHG emission reductions.

Logically, therefore, regulatory action which creates barriers for the solar sector – even if well intentioned -- run afoul of the Commonwealth's efforts to meet its climate change goals within the collaborative legal framework established by the Legislature, the Administration and the Commonwealth courts. We respectfully submit that the SREC I reversal will be understood as a form of regulatory uncertainty that creates substantial barriers to the quality and quantity of

³⁰ See, e.g., *Kain v. Dep't of Envtl. Prot.*, 474 Mass. 278, 49 N.E.3d 1124 (2016) (rejecting the agency's regulations as inadequate to achieve the Legislative mission with respect to the Regional Greenhouse Gas Initiative); *New England Power Generators Ass'n, Inc. v. Dep't of Envtl. Prot.* ("NEPGA"), 480 Mass. 398, 105 N.E.3d 1156 (2018) (upholding the program in face of challenge).

³¹ Exec. Order No. 569 § 1 (2016), available at <https://www.mass.gov/executive-orders/no-569-establishing-an-integrated-climate-change-strategy-for-the-commonwealth>.

³² Mass. Gen. Laws Ann. ch. 21N, § 3 (West 2008); *Kain*, 474 Mass. at 282; *New England Power Generators Ass'n, Inc.*, 480 Mass. at 400.

³³ *Kain*, 474 Mass. at 300.

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renewables investment required to meet the Commonwealth's climate change goals. Certainly, nothing in the Draft Regulation or Stakeholder Outreach supports a contrary conclusion.

II. The Draft Regulation is illegal.

The Legislature's direction, in statute, is both the touchstone for and limit on DOER's authority.³⁴ This is particularly the case here, where the Legislature has acted in accordance with the advice of an expert Task Force and its extensive Report, establishing a robust record on what can and should be done to advance renewable energy and the clean energy economy in the Commonwealth.

A. The Draft Regulation is neither mandated, nor authorized, by the Legislature, a fatal flaw under applicable law.

As noted above, DOER's position with respect to the Draft Regulation is that the proposed amendments revise the RPS Class I and RPS Class II regulations and are required to address policy related changes, including changes "to implement Section 12 of Chapter 227 of the Acts of 2018, now codified at M.G.L. c. 25A, § 11F." However, and while we offer no view as to the remainder of the Draft Regulation, the 2018 additions to current M.G.L. c. 25A, § 11F on which DOER relies do not provide any credible support for DOER's SREC I reversal. That statutory section, and the directive from the Legislature that it encapsulates in "An Act to Advance Clean Energy," states in its entirety:

SECTION 12. Section 11F of said chapter 25A, as so appearing, is hereby amended by striking out, in lines 16 and 17, the words "and (3) an additional 1 per cent of sales every year thereafter" and inserting in place thereof the following words: (3) an additional 1 per cent of sales each year thereafter until December 31, 2019; (4) an additional 2 per cent of sales each year thereafter until December 31, 2029; and (5) an additional 1 per cent of sales every year thereafter. Any electric load served under a retail electricity supply contract executed or extended not later than December 31, 2018, shall be exempt from

³⁴ See, e.g., *Biogen IDEC MA, Inc. v. Treasurer & Receiver Gen.*, 454 Mass. 174, 908 N.E.2d 740 (2009) ("We employ a two-part inquiry to analyze the validity of duly promulgated regulations. *Goldberg v. Board of Health of Granby*, 444 Mass. 627, 632-633 (2005). Using conventional tools of statutory interpretation, we first consider 'whether the Legislature has spoken with certainty on the topic in question, and if we conclude that the statute is unambiguous, we give effect to the Legislature's intent.' *Id.* If the Legislature has not directly addressed the issue, we consider whether the relevant statutory language is sufficiently ambiguous to support multiple, rational interpretations. *Id.* at 633. See, Richard Pierce, Jr., *Administrative Law* § 3.6, at 169-171 (4th ed. 2002 & Supp. 2009) (discussing analysis under *Chevron U.S.A. Inc. v. Natural Resources Defense Council*, 467 U.S. 837 [1984]).").

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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.³⁵

It is unsurprising that the Legislature is silent in 2018 on the need for retroactive removal of SRECs, because it has elsewhere and clearly has directed DOER not to undermine SRECs Program allocation. In 2016, for instance, the Legislature issued the following mandate:

[A]ny renewable energy generating source using solar photovoltaic or solar thermal electric energy that has previously qualified for programs pursuant to subsection (g) of section 11F of chapter 25A of the General Laws and applicable regulations, as determined by the department of energy resources *shall continue to be* subject to and receive benefits from said programs, including, but not limited to, the solar carve-out program and its successors, pursuant to the requirements of 225 CMR 14.00.³⁶

Thus, DOER's SREC I reversal is not only unauthorized by the statutory provision on which DOER relies, but contradicts the Legislature's clear directives, a fatal flaw under even the deferential standard of review of agency rulemaking.³⁷ This is because "a regulation that is irreconcilable with an agency's enabling legislation cannot stand."³⁸ We respectfully submit that the SREC I reversal cannot be reconciled with the Legislature's twin directives to DOER to expand the solar sector in the Commonwealth and to reduce GHG emissions, particularly where the assumed savings to ratepayers are both undemonstrated and comparatively trivial.

In any event, all non-emergency regulations, including the SREC I reversal, are subject to the Massachusetts Administrative Procedures Act ("MAPA").³⁹ Under the MAPA, two mandatory submissions are required: (1) DOER must include in the Draft Regulation "any other information necessary to show compliance with statutory requirements relative to issuance of such regulations;" and (2) no rule or regulation is "effective until an estimate of its fiscal effect

³⁵ An Act to Advance Clean Energy, ch. 227, § 12, Mass. Acts. (2018).

³⁶ See, e.g., Mass. Gen. Laws Ann. ch. 75, § 10 (West 2016) (emphasis added).

³⁷ See, e.g., *Biogen IDEC MA, Inc.*, 454 Mass. 174, 187 (2009) ("We accord substantial deference to the agency's regulations and 'apply all rational presumptions in favor of the validity of the administrative action and [do] not declare it void unless its provisions cannot by any reasonable construction be interpreted in harmony with the legislative mandate.'") (quoting *Consolidated Cigar Corp. v. Department of Pub. Health*, 372 Mass. 844, 855 (1977)).

³⁸ *City of Quincy v. Massachusetts Water Res. Auth.*, 421 Mass. 463, 468, 658 N.E.2d 145 (1995).

³⁹ Mass. Gen. Laws Ann. ch. 30A, § 2,5 (West 2010).

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including that on the public and private sector, for its first and second year, and a projection over the first five-year period, or a statement of no fiscal effect has been filed with said state secretary,” including with an assessment of the effect on small businesses.⁴⁰ Neither obligation has been adequately satisfied here. Nor could it be with a summary statement of presumed consumer cost savings, given the more credible, holistic assessments of solar integration as stabilizing electricity pricing and advancing clean energy innovation economy (as detailed in Section I).⁴¹

B. The SREC I reversal is retroactive, an equally fatal flaw as a matter of law.

Despite a predisposition to afford agencies discretion in their rulemaking efforts (as acknowledged in Section II.A), the Commonwealth courts consistently have invalidated retroactive regulation. The legal principle is clear: “[A] regulatory change affecting substantive rights generally only applies prospectively.”⁴² The exceptions are few, viewed with skepticism by the Commonwealth courts, and occur solely where “(1) legislative intent expressly or impliedly indicates retroactive application is desirable; (2) where the statute is ameliorative or curative in nature; or (3) where fulfillment of the parties’ reasonable expectations may require the statute’s retroactive application.”⁴³

Further, in assessing regulatory reversals, as here with the SREC I reversal, the Commonwealth courts have paid particular care to the agency’s internal policy with respect to the historic regulation.⁴⁴ The defining principal could not be more clear: “Although courts give the force of law only to formal agency regulations, *administrative agencies must abide by their own internally promulgated policies*.”⁴⁵ Stated otherwise, the Commonwealth courts view agency

⁴⁰ Mass. Gen. Laws Ann. ch. 30A, § 5 (West 2010).

⁴¹ See, e.g., *Biogen IDEC MA, Inc.*, 454 Mass. at 174.

⁴² *Id.*; see also *Hanscom v. Malden & Melrose Gaslight Co.*, 220 Mass. 1, 3, 107 N.E. 426 (1914); *Figueroa v. Dir. of Dep’t of Labor & Workforce Dev.*, 54 Mass. App. Ct. 64, 70-71, 763 N.E.2d 537 (2002).

⁴³ *Biogen IDEC MA, Inc.*, 454 Mass. at 190 (quoting Norman J. Singer, *Sutherland Statutory Construction* § 41:4, at 399 (7th ed., 1943)); *Town of Canton v. Bruno*, 361 Mass. 598, 606-607, 282 N.E.2d 87 (1972) (stating legislative changes to remedy past errors, omissions, and neglects, may be retroactive).

⁴⁴ See, e.g., *Biogen IDEC MA, Inc.*, 454 Mass. at 184 (“If, on the other hand, Treasurer O’Brien had a policy of applying the outstanding credit balance exemption to uncashed accounts payable checks, Treasurer Cahill’s position would represent a departure from past policy and raise retroactivity concerns.”); see also *Town of Brookline v. Comm’r of the Dep’t of Envtl. Quality Eng’g*, 387 Mass. 372, 379, 439 N.E.2d 792, 799 (1982) (“We recognize, of course, that the application of new principles or standards announced in a decision may be so unfair as to amount to an abuse of discretion.”).

⁴⁵ *Comm’r of Revenue v. BayBank Middlesex*, 421 Mass. 736, 739, 659 N.E.2d 1186 (1996).

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policy as to be abided. Following this logic, DOER's policy on SREC I allocations cannot be changed without a compelling reason. In this instance, where the DOER policy of treating SREC generation as not subject to the Opt-In Term was not merely internal, but widely communicated to the regulatory community, judicial review is likely to be all the more searching.

For these reasons, we respectfully submit the SREC I reversal is an impermissibly retroactive, unjustified policy reversal that will not survive judicial review, and must be retracted.

Again, for each and all of the reasons articulated herein, we respectfully request retraction of the SREC I reversal in the Draft Regulation, and a return to a process that is consistent with the Commonwealth's electricity pricing, economic and climate change goals, not to mention the Legislature's statutory directives and DOER's consistently articulated policy.

Sincerely,

A handwritten signature in blue ink, appearing to read "Elise N. Zoli", with a stylized flourish at the end.

Elise N. Zoli

Exhibit A

Dear RPS/APS Stakeholder,

On April 5, 2019, the Department of Energy Resources (DOER) filed three amended draft regulations with the Secretary of State's office. These regulations include 225 CMR 14.00: Renewable Energy Portfolio Standard – Class I (RPS Class I), 225 CMR 15.00: Renewable Energy Portfolio Standard – Class II (RPS Class II), and 225 CMR 16.00: Alternative Energy Portfolio Standard ("APS"). The changes to the APS regulation were filed as an emergency regulation and therefore are effective immediately. The unofficial versions of each of the regulations filed with the Secretary of State's office have been posted to DOER's website for stakeholder review and comment. Information on the RPS rulemaking can be found [here](#) and information on the APS rulemaking can be found [here](#).

The proposed changes to each regulation are summarized below:

APS

On January 1, 2019, the ability for Small Renewable Thermal Generation Units (i.e. Air Source Heat Pumps, Ground Source Heat Pumps, and Solar Thermal) to receive 100% of their alternative energy certificates following their first quarter of eligibility (Pre-minting) was eliminated. This change was triggered due to the ratio of APS market supply and demand in 2018 and resulted in Small Renewable Thermal Generation Units installed on or after January 1, 2019, receiving their alternative energy certificates spread out evenly over a 10-year period (Forward Minting).

In response to industry concerns about this transition and the impact that it would have on the economics of projects and the adoption of these technologies, DOER filed an emergency regulation that eliminates the transition from Pre-minting to Forward Minting. Eliminating this transition will allow owners of such Small Renewable Thermal Generation Units to continue to receive 100% of their alternative energy certificates following their first quarter of eligibility, significantly improving their ability to offset upfront installation costs. As an emergency regulation, this change was effective immediately on the date of filing, April 5, 2019.

APS Study

In addition to the targeted program changes addressed in the APS rulemaking, DOER issued a Request for Quotes (RFQ) to vendors on the Commonwealth's PRF 62 list on April 5, 2019. The RFQ seeks the services of a consultant to:

1. Evaluate the existing incentive levels provided to different eligible technologies under the program and their impact on technology adoption;
2. Review and recommend potential expansion of the program to cover additional technologies or scale back the support for existing technologies;
3. Review supply and demand levels required for a sustainable market, including an examination of expanding the program compliance requirements; and
4. Conduct an examination into the ratepayer costs and benefits associated with the program.

DOER expects that the analysis conducted as part of this study will be used to inform its broader 2020 review of the APS program, as required by regulation.

RPS Class I

The proposed changes to both RPS Class I and II include those required by Chapter 227 of the Acts of 2018, changes made to improve the regulation, streamline requirements, reduce costs, and eliminate unnecessary or onerous provisions as contemplated by Executive Order 562, and other policy related changes that were identified by DOER during its comprehensive review of the existing regulations. The changes to RPS Class I include the following:

1. Minimum Standard Revisions

DOER has modified the RPS Class I Minimum Standard percentage requirements for 2020 and beyond consistent with the changes required by Chapter 227 of the Acts of 2018. These changes increase the growth rate for the RPS Class I Minimum Standard percentage from 1% per year to 2% per year from 2020 – 2029. In 2030 and beyond, the requirement continues to increase at a rate of 1% per year.

2. Eligibility Criteria and Ongoing Generator Compliance Requirements

a. General Eligibility Criteria

DOER proposes eliminating capacity commitment obligation requirements that are applicable to certain types of generators in order to streamline the regulation and improve market efficiency.

b. Woody Biomass

DOER proposes eliminating several definitions as well as making changes to the lifecycle greenhouse gas emissions reduction calculation, overall efficiency requirements, and fuel sourcing requirements. These proposed changes align with the APS requirements for woody biomass wherever possible. Certain reporting requirements that were deemed onerous or administratively burdensome have also been proposed to be eliminated, but the stringency of sustainable forestry requirements for forest derived fuels have been maintained.

In addition to the changes that align the RPS regulation with the APS regulation, DOER has also proposed no longer allowing fuel sourced from land clearings related to development to qualify for the RPS. DOER has additionally proposed eliminating the ability for generators to make payments to DOER in order to retain their Statement of Qualification in the event they are unable to demonstrate compliance with the lifecycle greenhouse gas requirements in a particular year.

With respect to the overall efficiency requirement, DOER has proposed eliminating the sliding scale that allowed facilities to earn between $\frac{1}{2}$ REC and a full REC based on their overall efficiency. Under the proposed draft regulation, the overall efficiency requirement is set at 50% to earn a full REC for facilities utilizing fuel that is comprised

of 5% or more Forest Derived Thinnings or Forest Derived Residues. Facilities utilizing fuel that is comprised of more than 95% Forest Salvage or Non-Forest Derived Residues, will not be subject to an overall efficiency requirement in order to earn a REC. These proposed changes simplify and streamline requirements and reflect the significant differences between the lifecycle greenhouse gas impacts of utilizing these different types of woody biomass.

c. Small Hydroelectric

DOER proposes eliminating the requirement that small hydroelectric facilities must renew their Low Impact Hydropower Institute certification in order to remain qualified, consistent with the recommendations of DOER's 2016 Report on Permitting Small and Low Impact Hydropower Projects in Massachusetts. Further consistent with the recommendations of the report, DOER plans to require all qualified facilities to self-certify at intervals specified by DOER that they continue to meet any conditions imposed and operate in a manner consistent with their initial certification.

d. RPS Class I Solar Carve-out (SREC I) Renewable Generation Units

DOER proposes clarifying that SREC I facilities may not continue to generate SRECs after the first 40 quarters in which they are eligible. DOER estimates this change has the potential to provide over \$150 million in cost savings to ratepayers from 2020 - 2023 by transitioning SREC eligible projects to Class I RECs sooner.

e. Import Generation Units

DOER proposes eliminating certain requirements for generators outside of ISO-NE related to certificate tracking and requiring off-taker contracts with entities within the region. This streamlines the regulation by removing unnecessary and duplicative tracking requirements that are challenging to enforce.

3. Compliance Procedures for Retail Electricity Suppliers

a. Financial Security Posting

DOER proposes requiring that competitive retail electricity suppliers post financial security that can be collected by DOER in the event of non-compliance. This change protects ratepayers by enhancing DOER's ability to collect Alternative Compliance Payments from non-compliant retail suppliers.

b. Alternative Compliance Payment (ACP) Rate Cap

DOER proposes capping the RPS Class I ACP at \$70/MWh beginning in 2020 with a review scheduled for every five years thereafter. This will reduce ratepayer exposure to higher program costs, particularly as Minimum Standard percentage requirements continue to increase.

4. Other Administrative Changes

DOER has also proposed various other changes eliminating definitions or requirements that are no longer relevant (e.g. Solar Carve-out and Solar Carve-out II Minimum Standard calculation formulae that are no longer in use), or that better align regulatory requirements and definitions.

RPS Class II

1. Eligibility Criteria and Ongoing Generator Compliance Requirements

a. General Eligibility Criteria

DOER proposes eliminating capacity obligation requirements consistent with the proposed changes to these requirements RPS Class I.

b. Woody Biomass

Proposed changes to woody biomass provisions to RPS Class II are consistent with the changes proposed to RPS Class I.

c. Small Hydroelectric

Proposed changes to small hydroelectric eligibility under RPS Class II are consistent with the changes proposed to RPS Class I.

d. Import Generation Units

Proposed changes to certain requirements for generators outside of ISO-NE related to certificate tracking and requiring off-taker contracts with entities within the region are consistent with the changes proposed to RPS Class I.

2. Compliance Procedures for Retail Electricity Suppliers

a. Increase RPS Class II Waste-to-Energy Minimum Standard

DOER proposes to increase the RPS Class II Waste-to-Energy Minimum Standard from 3.5% to 3.7% for 2019 through 2025 to align supply and demand with current retail load figures and address issues related to persistent oversupply. Under the draft regulation, the Minimum Standard would revert to 3.5% in 2026 with a review conducted every five years beginning in 2025, at which point it could be modified following consultation with MassDEP over its consistency with the Commonwealth's solid waste management plan.

NOTE: DOER's proposed change to the Waste-to-Energy Minimum Standard is subject to change following further consultation with MassDEP regarding its consistency with the Commonwealth's solid waste management plan and review of comments from stakeholders.

b. Increase Class II Waste-to-Energy ACP Rate

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. This 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.

NOTE: DOER's proposed change to the Waste-to-Energy ACP Rate is subject to change following further consultation with MassDEP regarding its consistency with the Commonwealth's solid waste management plan and review of comments from stakeholders.

c. ACP Rate Caps

DOER proposes capping the RPS Class II ACP rates at 50% of the RPS Class I rate (\$35/MWh). This will reduce ratepayer exposure to higher future program costs and better align RPS Class II ACP rates with the RPS Class I ACP rate.

3. Other Administrative Changes

DOER has also proposed various other changes eliminating definitions or requirements that are no longer relevant or better align regulatory requirements and definitions.

Public Hearings and Written Comment Periods

One public hearing will be conducted in Boston to receive verbal and written comments on all three proposed regulations.

Location: 100 Cambridge Street, 2nd Floor Conference Room
Boston, MA 02114
Date: May 13, 2019
1:00 – 4:00 PM

Two additional public hearings will be conducted to receive verbal and written comments on the proposed RPS Class I and II regulations. More information on these hearings can be found [here](#).

Location: UMass Amherst
Integrated Science Building, Room 221
661 North Pleasant Street
Amherst, MA 01003
Date: May 16, 2019
1:00 – 3:00 PM

Location: Mt. Wachusett Community College
Arthur F. Haley Academic Building, Multi-Purpose Room #115
444 Green Street
Gardner, MA 01440
Date: May 17, 2019
1:00 – 3:00 PM

Location: UMass Center at Springfield
Classroom 14
1500 Main Street
Springfield, MA 01115
Date: May 29, 2019
6:30 – 8:30 PM

Verbal and written testimony will be accepted at the hearing(s); however, parties are requested to provide written copies of their testimony.

Written comments will be accepted on the APS regulation until 5 PM on May 13, 2019. Please submit written comments on the APS regulation to Samantha Meserve electronically to Thermal.DOER@mass.gov or via mail to the Department of Energy Resources, 100 Cambridge Street, Suite 1020, Boston, MA 02114.

Written comments on the RPS Class I and RPS Class II Regulations will be accepted until 5 PM on June 7, 2019. Please submit written comments on the RPS Class I and RPS Class II regulations to John Wassam electronically to DOER.RPS@mass.gov or via mail to the Department of Energy Resources, 100 Cambridge Street, Suite 1020, Boston, MA 02114.

Copies of the proposed regulations may be downloaded from the DOER rulemaking websites for [APS](#) and [RPS](#), or by contacting DOER at thermal.DOER@mass.gov or DOER.RPS@mass.gov, respectively.

Regards,

Judith F. Judson
Commissioner
Department of Energy Resources