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December 6, 2019

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

RE: RPS Compliance Frequency Comment

Dear Mr. Wassam,

The Office of the Attorney General ("AGO") appreciates the opportunity to comment on the Department of Energy Resources' ("DOER") November 13, 2019 Frequency of Compliance Stakeholder Questions.[1] DOER seeks stakeholder feedback on questions it posed regarding its proposal to require more frequent compliance cycles for RPS Class I and RPS Class II requirements (collectively, "RPS"). The AGO submits these comments recognizing that the DOER may subsequently seek to amend the applicable regulations (225 C.M.R. 14.00 *et seq.* and 225 C.M.R. 15.00 *et seq.*) and receive additional comments.

As the DOER is aware, recent investigations and data analyses by the AGO show troubling trends by a subset of Retail Electric Suppliers subject to RPS compliance obligations—Competitive Electric Suppliers—both in sales tactics and in propensity to charge consumers above-market prices with disproportionate impacts on Massachusetts' most economically disadvantaged communities. Indeed, the AGO has called for an end to the individual residential electric supply market based on the findings contained in the AGO's March 2018 report, *Are Consumers Benefiting from Competition? An Analysis of the Individual Residential Electric Supply Market in Massachusetts*[2] and subsequent August 2019 update[3] (collectively, the

[1] The AGO requested and was granted an extension to file comments.
[2] Massachusetts Attorney General's Office, *Are Consumers Benefiting from Competition? An Analysis of the Individual Residential Electric Supply Market in Massachusetts*, prepared by Susan M. Baldwin (March 2018).
[3] Massachusetts Attorney General's Office, *Are Consumers Benefiting from Competition? An Analysis of the Individual Residential Electric Supply Market in Massachusetts (August 2019 Update)*, prepared by Susan M. Baldwin (August 2019).

"Reports"). The Reports analyzed rates actually charged to individual residential consumers in Massachusetts by Competitive Electric Suppliers and found that, between July 2015 and June 2018, those consumers paid $253 million above what they would have paid if they were on basic service. The Reports were unable to find any significant benefits, including additional voluntary REC obligations, that could reasonably justify the hundreds of millions of dollars more that affected consumers paid in electricity supply costs.

Further, the AGO's investigations of Spark Energy, Just Energy Inc., Viridian Energy LLC ("Viridian"), Starion Energy, Inc. ("Starion"), and Platinum Advertising II, LLC ("Platinum") illustrate the risk Competitive Electric Suppliers place on consumers, and the public policy programs these consumers pay to support. Moreover, the AGO is aware of DOER's frustration with the failure of certain Competitive Electric Suppliers to meet their obligations under the RPS, most notably the 2018 actions of Union Atlantic Electricity, LLC[4] and then Agera Energy. Therefore, the AGO strongly supports the DOER's attempts to preserve its policy and financial interests and regulatory authority by proposing mitigation efforts for RPS obligation compliance. The AGO offers the following additional considerations for the DOER in furtherance of this goal.

Question 1. DOER Proposal for Quarterly Compliance

The DOER proposal would require Retail Electric Suppliers to settle its RPS obligations on a quarterly, rather than an annual basis. Specifically, the DOER proposes that Retail Electric Suppliers satisfy ten percent of their annual obligation in the first three quarters of the compliance year, with the final quarter's compliance requiring seventy percent of the annual compliance. Because RPS obligations accrue with every kilowatt-hour sale made and ratepayers pay *monthly* for the kilowatt-hours that they consume, mid-term compliance payments are appropriate. Ratepayers should get what they paid for. Due to the large gap between the time customers remit payment and the time when the Retail Electric Suppliers retire renewable energy certificates ("RECs") or make an alternative compliance payments ("ACP"), customers of Retail Electric Suppliers are currently at a higher risk of paying the premium for RPS compliance without realizing the benefit if a supplier fails to satisfy its RPS obligations. Regular, predictable mid-year obligation settlements will timely deliver to customers the benefits to which they are entitled. Additionally, the DOER and other interested stakeholders, including subscribing or potential customers, the AGO, and the Department of Public Utilities ("DPU") (who, like the DOER, have regulatory authority over Retail Electric Suppliers), will know sooner if a supplier is at risk of failing its customers in order to take action to prevent further harm.

Further, the DOER's proposal does not appear to alter the statutory requirement that each Retail Electric Supplier "annually submit for the department's review a filing illustrating the retail supplier's compliance with the requirements of" the RPS.[5] Indeed, DOER should clarify

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[4] *See generally*, Department of Energy Resources, *Petition for Licensure Revocation Regarding Union Atlantic Electricity, LLC/s Competitive Supplier License for Non-compliance with 2017 RPS & APS Standards* (December 6, 2018).

[5] G.L. ch. 25A, §11F(f)

that the quarter four compliance filing should encompass this annual review *and* require a demonstration of much of the annual obligation.

The AGO supports the DOER's proposal for quarterly compliance for the RPS in order to protect the interests of consumers who have paid monthly for these products and to preserve the Commonwealth's clean energy interests. However, the AGO requests that the DOER increase its contemplated 10/10/10/70 division to require suppliers to satisfy fifteen percent of its obligation in each of the first three quarters with the quarter four compliance completing the remaining fifty-five percent (15/15/15/55). Even at fifteen percent, this amount is less than the obligation a supplier likely accrued through kilowatt hour sales during each quarter, yet still represents a meaningful contribution on behalf of customers towards that obligation.

To efficiently manage these more frequent compliance cycles and to establish predictability for participating suppliers, the DOER should clarify its regulations regarding how each quarterly compliance will be calculated and the dates when each compliance filing is required. Current annual compliance filings are made no later than July 1st of the subsequent compliance year, allowing all parties to correctly calculate the obligation required from the previous year.[6] Because the DOER proposes to require quarterly compliance based on the annual obligation, the AGO recommends that the DOER require the first three quarterly filings be made at the end of the corresponding quarter in the compliance year, using a proxy, set at fifteen percent of the previous compliance year kilowatt hour sales. The final compliance filing in quarter four should reconcile any differences between the proxy and actual sales in quarters one through three to reach the full obligation of the compliance year. By using a blend of proxy and actual, the DOER will provide flexibility for a supplier to meet its total annual obligation if its load goes up or down.

The DOER should also state in regulations that, in the event a supplier is more than five business days late with a quarterly filing, the DOER will report said non-compliance to the DPU immediately. While a Competitive Electric Supplier should also continue to work with the DOER to bring its late filing into compliance, the DPU as license-grantee should be made aware of a supplier's failure in order to determine if additional remedies or consequences are available through licensure action. If efforts to bring a Competitive Electric Supplier into compliance fail, the DOER should also continue its practice of petitioning the DPU to revoke the non-compliant Competitive Electric Supplier's license.

Question 2. RPS and Energy Market Implications

In considering RPS and Energy Market implications, the DOER should enact rules and policies to ensure that Retail Electric Suppliers meet their obligation to procure increasing amounts of eligible renewable energy pursuant to the RPS. Furthermore, the DOER should also consider the consumer costs to fund the RPS. Finally, the DOER should design any changes in the frequency of compliance requirement to minimize impacts on markets.

[6] 225 C.M.R. 14.09(01); 225 C.M.R. 15.09(1).

As the DOER noted in its petition to the DPU regarding Union Atlantic Electricity, LLC ("Union Atlantic"),[7] Competitive Electric Suppliers' failure to comply with the RPS undermines the Commonwealth's policy goals, specifically those of the Global Warming Solutions Act ("GWSA").[8] Indeed, the Legislature places such a high value on the RPS that the annual obligation increase will be accelerated for the next ten years.[9] Failure by suppliers to meet their obligation should not be tolerated and the mitigation steps first offered by the DOER, with the modifications proposed herein by the AGO, should be implemented as soon as practicable.

As noted, ratepayers pay for RPS obligation monthly as part of the kilowatt hour rate charged by the supplier. A supplier collects the funds regularly and should be required to settle its obligation with more frequent regularity than required today. Consumers should get what they paid for.

In implementing a more frequent compliance cycle, DOER can take steps to mitigate impacts on the RPS markets. Of note, the DOER should focus compliance on the timing of REC settlement rather than purchase (see more below).

Questions 3/4. Potential Additional Costs and Mitigation of Costs

To the extent that more frequent RPS compliance cycles do result in administrative costs, such costs will likely be de minimis because each supplier currently maintains compliance procedures and mechanisms to complete its annual filing. Moreover, any additional costs will be worth the additional protections granted to participating customers and the Commonwealth's clean energy policies. Suppliers may argue that the lost flexibility to purchase according to their schedule or at periods of over-supply (lower-cost) throughout the year will drive up the risk premium that consumers must pay for the procurement of RECs. However, the proposal articulated by the DOER here does nothing to stifle that flexibility. The sophistication of supplier purchasing power and decades of understanding of when RPS-eligible generation is likely to over-supply RECs, should allow for purchasing decisions similar to those currently made. In implementing this proposal, the DOER's regulations should make clear that quarterly RPS compliance cycles relate to the *retirement* of RECs or payment of ACPs only. The regulations should not require that purchases be made at any particular times of the year and should maintain the current ability to bank RECs purchased at times of REC oversupply (therefore, lower-priced). Moreover, the DOER proposal does not require the quarterly compliance to match the RPS obligation for that quarter, nor does it call for real-time or near real-time purchasing of RECs. This additional flexibility will allow suppliers to procure the remaining REC obligations for that quarter at a time before the end of the year that is best for customers.

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[7] Department of Energy Resources, *Petition for Licensure Revocation Regarding Union Atlantic Electricity, LLC's Competitive Supplier License for Non-compliance with 2017 RPS & APS Standards*, at 5.
[8] St. 2008, c. 298.
[9] St. 2018, c. 227, § 12.

The AGO notes that, because competitive electric supply customers are often locked into long-term contracts (although many are also on month-to-month rates), the REC premium charged to a customer is determined far in advance of any purchases. If there is a risk from more frequent RPS compliance cycles, that risk is to the profit that Competitive Electric Suppliers currently enjoy from charging customers an estimated price for RECs sufficient to withstand months or years of market fluctuations and then using market savvy to purchase at a lower cost. At no point does the competitive electric supply customer realize the benefit of those savings.

When viewing potential administrative costs or risk premium profits lost by suppliers against the backdrop of the Union Atlantic compliance year 2017 failure, these costs are minimal. Consider that not only did customers pay Union Atlantic an RPS premium as part of their charged rate for which nothing was purchased, but the RPS program lost a portion of its goal for 2017 (with implications for GWSA goals and other clean energy/carbon reduction state goals). Assuming the premium paid by customers is equal to the DOER's estimate for lost RPS benefits, Union Atlantic's 2017 failure equaled $906,966.16.[10]

Question 5. Alternative Proposals

In addition to implementing a more frequent compliance cycle, the DOER should also require Competitive Electric Suppliers to secure bonds to partially cover their annual RPS obligation. More frequent REC settlements provide for mitigation to secure mid-year compliance, deliver ratepayer benefits, and allow the DOER and other stakeholders certain assurances that suppliers will comply with the RPS in furtherance of the Commonwealth's overall clean energy goals. A bonding requirement will more adequately preserve the DOER's and the Commonwealth's rights if a supplier brazenly fails to meet its RPS obligations in a compliance year. This will be of particular importance for those suppliers that abruptly cease operating in Massachusetts and file for bankruptcy.

Competitive Electric Suppliers who operate in the other 14 retail electric supply jurisdictions have a similar bonding requirement, making this not only a reasonable requirement but also one that most suppliers are familiar with (*see* Exhibit A, for an example of what Starion is obligated to carry in each state in which it operates). This familiarity will ease administrative burden. The bond amount should be established according to either: (1) a set amount multiplied by a percentage of kilowatt hour sales in the previous compliance year, or (2) a tiered chart, provided for in regulations, which lists several ranges of kilowatt hour sales and a corresponding, set bond amount.

The AGO recognizes there are distinctions between a Competitive Electric Supplier (including municipal aggregations) and electric distribution companies ("EDC") for the purposes of this proposed bonding requirement, yet these regulations apply to all retail electric suppliers. Regardless of circumstance, an EDC has an inherent bonding requirement by virtue of serving as

[10] DOER estimated Union Atlantic's ACPs for the 2017 Compliance Year to be $453,483.08, *see* Department of Energy Resources, *Petition for Licensure Revocation Regarding Union Atlantic Electricity, LLC/s Competitive Supplier License for Non-compliance with 2017 RPS & APS Standards*, at 1.

the incumbent utility under the oversight of the DPU. Failure to comply with its RPS requirements would be a violation of previous DPU orders approving cost recovery of REC procurements. Thus, the DOER should include an exemption from this proposed bonding requirement to any Retail Electric Supplier that received a (preliminary or otherwise) guarantee of rate recovery for its RPS obligations by Order of the DPU.

The AGO also recommends that DOER explore the possibility of taking a security interest in all purchase of receivables accounts, limited to accounts in Massachusetts, for preservation of rights in a bankruptcy proceeding. When a Competitive Electric Supplier files for bankruptcy, it is possible that the bankruptcy court could determine that the Commonwealth's right to collect that suppliers' RPS obligation is an unsecured claim, and thus other creditors' claims may take priority over the Commonwealth's claim. A security interest would grant DOER priority over unsecured to collect what is owed pursuant to the RPS from a competitive electric supplier's assets in the case of a bankruptcy filing. The AGO recognizes, however, that any such interest may need to be subordinated to security interests necessary for a supplier's financing.

Question 6. Additional Information

As noted *supra*, AGO knowledge of and experience with the Competitive Electric Supply markets stems from several sources, including data analysis of actual costs, specific investigations, ongoing litigation, and increasing numbers of complaints from consumers who feel they are aggrieved by a supplier. Indeed, since 2014, the AGO received several hundred of complaints. Consumers report false promises made in sales pitches, increased bills, shock about being locked in a contract (slamming), and confusion over what clean energy products are included in their supply.

Some of these complaints led to the AGO investigations into Spark Energy, Just Energy, Viridian, Starion, and Platinum. In 2009, the AGO secured refunds for Spark Energy customers who had been overcharged and payments to the Commonwealth for local consumer aid funds. In 2015, Just Energy paid $4.0 million and agreed to halt certain marketing practices; in 2017, Viridian paid $5 million in restitution and penalties and agreed to halt certain marketing practices; this year, Platinum (a third-party marketing firm used by several competitive electric suppliers to conduct door-to-door sales) paid $150,000 and will refrain from marketing in Massachusetts for a year.

The AGO will continue to investigate reports of unfair and deceptive acts and practices of Competitive Electric Suppliers pursuant to Chapter 93A. Unfortunately, the AGO knows too well how the resulting settlements and litigation can place the Commonwealth's RPS interests at risk, making the proposed efforts for more frequent compliance filings, bonding requirements, and establishment of the proposed security interest in the suppliers' purchase of receivables all the more meaningful. Indeed, only weeks after the AGO filed a $30 million Chapter 93A lawsuit against Starion, the supplier filed for bankruptcy in a bid to evade accountability to the Commonwealth for the alleged unlawful behavior.

In the case of Starion, the supplier continues to operate in Massachusetts and has thus far fulfilled its RPS obligation despite the bankruptcy proceeding. However, the AGO has found that bankruptcy court litigation requires significant time and resources. It is unlikely that the DOER—or any other state government agency—has the resources to actively participate in bankruptcy proceedings in courts across the country in order to ensure receipt of some portion of each delinquent suppliers' overdue RPS obligations.

Moreover, the consumer losses identified in the Reports are often the result of false promises of savings compared to basic service rates by Competitive Electric Suppliers. The AGO's investigations of Spark Energy, Just Energy, Viridian, Starion, and Platinum highlight the industry's alleged chapter 93A violations. Unfortunately, neither multi-million-dollar settlements nor analysis proving $253 million in consumer losses have served to dissuade Competitive Electric Suppliers from taking advantage of Massachusetts consumers. Many suppliers appear to be comfortable misleading customers individually—what is stopping these suppliers from doing the same to the Commonwealth's RPS program? These efforts of the DOER, with the AGO's suggestions herein, are a necessary protection of the Commonwealth's and consumers' interests given the untrustworthy behavior of the competitive electric supply industry.

Overall, the AGO is encouraged by the DOER's interest in protecting ratepayers from failed RPS compliance by Retail Electric Suppliers, particularly for the subset of competitive electric suppliers. The AGO respectfully requests that the DOER incorporate these recommendations in the final design of the Compliance Frequency Cycles for RPS and updated RPS Class I and RPS Class II regulations. The AGO welcomes further opportunity to engage with DOER on these important issues.

Respectfully submitted,
MAURA HEALEY
ATTORNEY GENERAL

/s/ Elizabeth Mahony

By: Elizabeth Mahony
Assistant Attorneys General
Office of Ratepayer Advocacy
One Ashburton Place
Boston, MA 02108
(617) 727-2200

Exhibit A

Bond Principal	Bond No.	Bond Amount	Bond Premium	Bond Obligee
Starion Energy PA Inc.	41131594	$250,000.00	$7,500.00	Metropolitan Edison Company and/or Pennsylvania Electric Company
Starion Energy PA Inc.	41131598	$250,000.00	$7,500.00	Maryland Public Service Commission
Starion Energy PA Inc.	41266476	$250,000.00	$7,500.00	Treasurer, State of New Jersey
Starion Energy PA Inc.	41266479	$300,000.00	$9,000.00	People of the State of Illinois
Starion Energy, Inc.	41266480	$250,000.00	$7,500.00	State of Connecticut - Public Utility Regulatory Authority
Starion Energy NY, Inc.	41275957	$56,250.00	$1,688.00	Columbus Gas of Ohio
Starion Energy NY, Inc.	41275958	$56,250.00	$1,688.00	Duke Energy Ohio
Starion Energy NY, Inc.	41275959	$56,250.00	$1,688.00	The East Ohio Gas Company
Starion Energy NY, Inc.	41275960	$56,250.00	$1,688.00	Vectren Energy Delivery of Ohio, Inc.
Starion Energy PA, Inc.	41336075	$1,070,447.00	$24,956.00	Pennsylvania Public Utility Commission
Starion Energy, Inc.	41378108	$250,000.00	$7,500.00	Rhode Island Division of Public Utilities and Carriers
Starion Energy, Inc.	41378109	$250,000.00	$7,500.00	FirstEnergy Corp. as Agent for the FirstEnergy Operating Companies of Ohio (Ohio Edison Company, Cleveland Electric Illuminating Company, the Toledo Edison Company)
	TOTAL:	**$3,095,447.00**	**$85,708.00**	

December 4, 2019

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

(submitted via email to doer.rps@mass.gov)

Re: RPS Compliance Frequency Comment

Dear Interim Commissioner Woodcock,

Calpine Corporation (Calpine) respectfully submits the following comments in response to Massachusetts's Department of Energy Resources (DOER) November 13, 2019 stakeholder questions regarding potential amendments to 225 C.M.R. 14.00 and 225 C.M.R. 15.00, which would change the compliance frequency for the Commonwealth's Renewable Portfolio Standard (RPS). Calpine has consistently advocated for consistent and predictable policies that both support environmental stewardship and fair competitive markets, and we oppose programs that have the potential to create market distortions or that unnecessarily increase program costs and complexity without additional environmental benefit. Thus, we do not support DOER's potential additional compliance requirements as outlined in the stakeholder questions.

Calpine operates the largest fleet of natural gas combined cycle (NGCC) and combined heat and power facilities in the U.S. Calpine is also the nation's largest producer of electricity from renewable, base-load geothermal resources. Overall, Calpine is capable of delivering approximately 26,000 megawatts (MW) of clean, reliable electricity to customers and communities in 16 U.S states and Canada, with 78 power plants in operation or under construction. In Massachusetts, Calpine operates the Fore River Energy Center, a natural gas combined cycle plant (NGCC) with baseload capacity of 750 megawatts (MW). We are currently developing a 20-megawatt storage project at this site. Calpine also operates two NGCC plants that serve ISO-New England's (ISO-NE's) wholesale markets: the Granite Ridge Energy Center (745 MW) and the Westbrook Energy Center (552 MW). In addition, Calpine serves load through its wholesale entity and through its retail subsidiary, Calpine Energy Solutions in Massachusetts. Calpine Energy Solutions serves as a licensed retail energy provider in every deregulated state in the U.S. This includes providing electricity to seventeen states, including Massachusetts and several others in ISO-New England (ISO-NE) as well as Washington, D.C.

Overall Concerns with the Potential Amendments Outlined in DOER's Stakeholder Questions

Calpine has long supported market-based greenhouse gas reduction mechanisms. However, we do not support a potential additional compliance obligation requiring 10 percent of annual obligations be settled in each of the first three quarters of the year with the remaining 70 percent of annual obligation settled by the end of the fourth quarter. DOER's stakeholder questions do not provide sufficient evidence that the apparent risk of or actual non-compliance is a significant issue in meeting the Commonwealth's annual RPS requirement. Before proposing such regulatory requirements, it would be important to understand

DOER's rationale for increasing the annual RPS compliance frequency and for DOER to consider other regulatory mechanisms to address any RPS compliance concerns.

Regulatory certainty is necessary in order to finance, design, permit, and build energy resources. Changing established program schedules and obligation requirements creates market uncertainty and increases financing costs. The potential amendments outlined in the stakeholder questions, if enacted, would establish a precedent that may lead DOER to change the sub-annual compliance schedule again, creating further regulatory uncertainty.

As Calpine has raised in prior comments to DOER related to the RPS and Clean Peak Standard, Massachusetts continues to have the most complex clean and renewable energy programs of any state in the U.S., with seven different classes of renewable requirements—each with its own separate set of regulations and guidelines. DOER's development of the Clean Peak regulations and the Department of Environmental Protection's (DEP's) proposed amendments to the Clean Energy Standard are already injecting additional compliance complexities. These complex programs make annual compliance burdensome for retail electric suppliers and creates administrative costs that are ultimately borne by consumers. We oppose regulatory changes that add complexity and costs in the near term without clear environmental benefits.

Annual RPS Compliance

Every other state in the ISO-NE market that has an RPS (Connecticut, Rhode Island, New Hampshire, Maine, and Vermont) has annual RPS compliance obligations that run from January to December. If DOER were to require that 10 percent of annual compliance in Massachusetts be meet at the end of each of the first three quarters and 70 percent be meet at the end of the fourth quarter, such amendments would have the potential to interfere with the market for ISO-NE-eligible RECs.

The potential amendment outlined in the stakeholder questions would also greatly complicate the REC trading market. Massachusetts RPS-eligible RECs are currently quoted and traded by their vintage year or the year in which the eligible electricity is generated. The NEPOOL REC market has also developed a standard delivery date of June 1st following each vintage year, which allows generators and Retail Electricity Supplier to coordinate their REC inventory and ensure they are not left with an obligation to deliver electricity without having yet received the RECs. Any program changes that include a sub-annual compliance requirement would, therefore, force a significant change to how the entire REC trading market functions, thereby disrupting market liquidity and increasing cost that are ultimately borne by the consumer.

Program Costs Would Increase

Program changes that increase the complexity of program compliance create increased costs that are passed on to the ratepayer. Generators and other sellers of RECs will inevitably charge a premium for complying with more stringent delivery timelines. Retail Electricity Suppliers will modify trade capture and reporting systems to track sub-annual delivery dates in addition to devoting more resources to analyze load to determine requirements, ensure the appropriate amount of RECs are retired in the GIS, and to demonstrate compliance with any new requirements. Additionally, increased volatility and prices in the REC market as a result of regulatory uncertainty and REC market disruption will further increase costs. Without any clear risks demonstrated by DOER from noncompliance, the additional compliance costs resulting from the potential amendments is unnecessary.

Alternative Compliance Options

Ensuring that Retail Electricity Suppliers meet their annual compliance obligation under the Commonwealth's RPS is a critical step in regulatory compliance and market oversight. However, Calpine does not believe that requiring sub-annual compliance, as outlined in the stakeholder questions, would solve any noncompliance risks. Rather, the independent ISO-NE Market Monitor would prevent any supplier from participating in the wholesale market if it is not meeting its state annual RPS compliance obligation. This threat has been, and will continue to be, a sufficient signal to potential non-complying entities. Therefore, we do not support any sub-annual compliance obligations as they are unnecessary to ensure compliance.

If, however, DOER determines a new regulatory requirement is needed to identify cases of non-compliance by Retail Electric Suppliers earlier in each compliance year and to limit risks of significant non-compliance, Calpine instead recommends that DOER develop a proposal that would require each Retail Electric Supplier to submit preliminary progress reports twice per year that forecast the load expected to be served during the calendar year and the progress it has made toward procurement of sufficient RECs to meet its associated RPS obligation. If, after reviewing a progress report, DOER determines that a Retail Electric Supplier is at risk of not complying with its RPS obligations, DOER could have the authority to require such supplier to post financial security (e.g., 10 percent of the estimated cost of an entity's annual obligation). Such a requirement for an at-risk Retail Electric Suppliers would mitigate the risk of the supplier filing for bankruptcy or leaving the market without meeting its RPS obligations for that year. Importantly, this alternative would also avoid the potential market complications discussed above with sub-annual compliance demonstrations.

In the end, however, we urge DOER to reevaluate the need to require sub-annual compliance assessments in light of existing mechanisms to prevent noncompliance. Therefore, we urge DOER not to proceed with any regulatory changes affecting the frequency of compliance with the RPS. Please do not hesitate to contact Steven Schleimer at Steven.Schleimer@calpine.com if you have any questions or need any additional information on this important issue.

Sincerely,

Steven S. Schleimer
Senior Vice President, Government and Regulatory Affairs, Calpine Corporation

Commonwealth of Massachusetts
Department of Energy Resources

RPS COMPLIANCE FREQUENCY COMMENT : December 4, 2019

WRITTEN COMMENTS OF DIRECT ENERGY

On behalf of Direct Energy Services, LLC and Direct Energy Business, LLC (collectively Direct Energy), as one of the largest retail electricity, natural gas suppliers and energy-related services companies in North America[1], I submit these comments in response to the Department of Energy Resources' ("Department or DOER") request for stakeholder comments pertaining to Renewable Portfolio Standards ("RPS") Compliance Frequency as stated in the email notice from Eric Steltzer, Director, of the Department's Renewable & Alternative Energy Division dated November 13, 2019.

BACKGROUND

In order to identify potential cases of non-compliance by Retail Electric Suppliers earlier in each compliance year and to limit risks of significant non-compliance and related effects on the Commonwealth meeting its Global Warming Solution Act requirements, the Department of

[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.

Energy Resources is considering further amendments to 225 C.M.R. 14.00 and 225 C.M.R. 15.00 to change the current annual compliance cycle for RPS Class I and RPS Class II to a more frequent compliance cycle. To assess the feasibility and implementation of such an action, the Department seeks stakeholder feedback regarding this matter. The Department requires stakeholder responses to be submitted by 5:00pm on December 4, 2019.

COMMENTS

Pursuant to Executive Order 562, agencies must ensure that a new regulation ***"does not unduly and adversely affect Massachusetts citizens and customers of the Commonwealth, or the competitive environment in Massachusetts."***[2]

As the Department most certainly appreciates, the competitive electricity market in the Commonwealth continues to advance and evolve as Retail Electric Suppliers conduct business in accordance with state law and regulation. Since the inception of the restructured retail electricity market[3] over 22 years ago, Retail Electric Suppliers have provided significant value, energy savings and new, innovative products and services to an array customer classes ranging from large commercial & industrial, small commercial and residential customers. Moreover, since the commencement of retail electricity competition in the Commonwealth, Retail Electric Suppliers have been required to comply with an increasing and cumulative inventory of environmental and clean energy regulatory compliance requirements that includes RPS Class 1 and Class 2, SREC 1 and SREC 2, Alternative Portfolio Standards, Clean Energy Standard and Clean Peak Standard. While Direct Energy certainly supports the intent and purpose of these regulations as well as their beneficial impact on the environment and mitigation effects of climate change, these

[2] E.O. 562, §§ 3, 5.

[3] Massachusetts Electric Industry Restructuring Act became effective on November 25, 1997.

learns that the LSE has defaulted and shifts the load to the electric distribution company or utility, who collects at best, 15 days of revenues. In this scenario, while potentially imposing new costs, administrative and operational constraints on Retail Electric Suppliers, Direct Energy believes that Retail Electric Suppliers would be basically in the same position where they are today.

Direct Energy thinks there is a better way that supports the goals of the competitive market, mitigates incremental costs to Retail Electric Suppliers and continues to provide electricity consumers in Commonwealth with advantageous pricing. The Massachusetts General Court has vested the Massachusetts Department of Public Utilities ("DPU") with plenary and enforcement powers pertaining to non-compliance. More specifically, 225 C.M.R. 14.12 and 225 C.M.R. 15.12 provide a process and existing remedies for the treatment of non-compliance by any retail electricity supplier. Most notably, the Department of Public Utilities can suspend or revoke a retail supplier's license based on a substantiated finding of non-compliance. There is nothing more compelling to a commercial enterprise than the prospect of being denied the ability to conduct business in a market.

In sum, if the Department is concerned about potential cases of non-compliance by Retail Electric Suppliers and the effects of non-compliance on meeting the Commonwealth's Global Warming Solution Act requirements, Direct Energy encourages the Department to coordinate with the Department of Public Utilities to fully utilized the enforcement mechanisms currently available to them to insure full compliance. In other words, if there a few "bad actors" that are not complying with the Department annual RPS compliance protocol, these Retail Electric

regulations do indeed come with a financial cost as well as a considerable administrative burden. I am confident that the Department realizes and fully appreciates that the incremental regulatory compliance obligations and related costs have a significant adverse impact on the pricing or rate structure that Retail Electric Suppliers can offer to electricity consumers. In other words, as additional regulatory compliance costs are imposed on Retail Electric Suppliers, the pricing that suppliers can provide or offer to their customers becomes increasing less competitive. In Executive Order 562, Direct Energy believes, in part, that is precisely the concern that Governor Baker is attempting to address to the Commonwealth's state agencies, i.e., be cognizant of the cost impacts of new regulation in customers and the competitive environment in Massachusetts.

While the Department is considering further amendments to 225 C.M.R. 14.00 and 225 C.M.R. 15.00 to change the current annual compliance cycle for RPS Class I and RPS Class II to a more frequent compliance cycle, Direct Energy urges the Department to reject its proposal as it will impose further incremental costs and administrative burdens on Retail Electric Suppliers.

Moreover, Direct Energy has deep concerns regarding the effectiveness and operational implementation of transitioning from an annual compliance obligation to a more frequent compliance schedule. For illustration purposes, let's assume that Renewable Energy Credits ("RECs") would need to be retired during the currently prescribed trading periods in NEPOOL GIS (i.e. RECs for Q.1. would require retirement between July 15th and September 15th. Using the Department's proposed retirement schedule of 10% per quarter, Direct Energy believes at best, only 10% of the requisite RECs would be retired by a defaulting Load Serving Entity ("LSE") and still have time to shift part of that load to a replacement LSE. As an example, LSE ABC Company retires the requisite RECs for Q.1. load served. In Q.2., ABC Company fails to retire RECs by the December 15th deadline and defaults. On December 16th, the Department

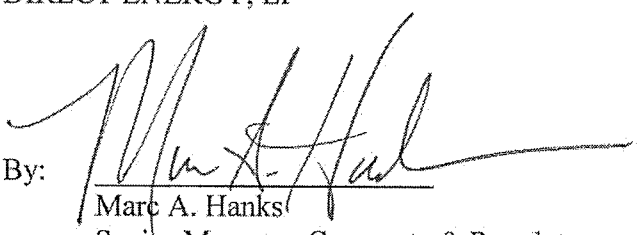
Supplier should be identified and referred to the Department of Public Utilities for review and potential enforcement action.

In addition to the DPU enforcement mechanism, Direct Energy further recommends that the Department establishes a "mid-year" RPS compliance status report requirement for Retail Electric Suppliers. In effect, the report is an attestation by an authorized company official or officer of the Retail Electric Supplier affirming that the supplier is "on track" to comply with their annual RPS obligation. For illustration purposes, the Retail Electric Supplier would provide the attestation on June 30th prior to next year annual RPS compliance report, e.g., June 30, 2020 status report for the July 1, 2021 annual RPS compliance report. By instituting this proposed new reporting protocol in lieu of, a more frequent RPS compliance filing regime, the Department will have advance notification of any potential non-compliance issue. Moreover, if a Retail Electric Supplier reports operational concerns regarding their ability to meet their RPS compliance, the supplier could be placed onto an enhanced monitoring or oversight group by the Department.

CONCLUSION

For all the foregoing reasons, Direct Energy urges the Department to reject changes to the current annual RPS compliance requirement by transitioning to a more frequent compliance cycle, as proposed. Direct Energy appreciates the opportunity to provide these written comments for the Department's review and consideration. Thank you.

Respectfully Submitted,
DIRECT ENERGY, LP

By: 

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The Energy Consortium, Inc.

12/4/2019

Mr. John Wassam
RPS & APS Program Manager
MA DOER

RE: Comments on the Proposed Changes to RPS Compliance Frequency

The Energy Consortium (TEC) appreciates the opportunity to provide these comments on the proposed increased frequency of compliance filings for Class I and II RPS obligations from retail energy suppliers.

TEC is a non-profit association of commercial, industrial, institutional, and governmental large energy users in Massachusetts and has participated in state and regional energy regulatory matters for forty years. It advocates positions and sponsors joint actions that promote fair cost-based energy rates, diversified supplies, retail market competition, and reliable service for its member organizations, their employees and all Massachusetts ratepayers.

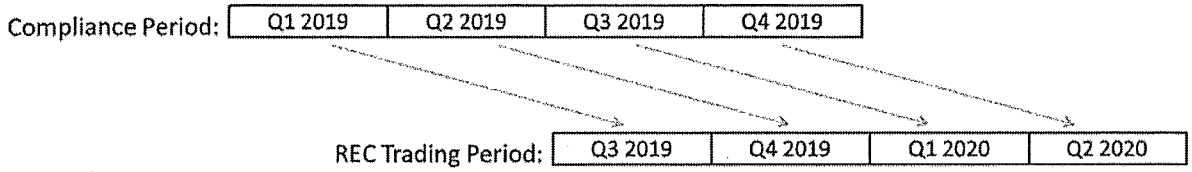
At a high level we have concern that based on the scope of the questions, the DOER appears to be focusing on a single solution to a problem that hasn't been clearly defined. Bankruptcies of retail energy suppliers resulting in defaults on RPS obligations are rare events and DOER has not demonstrated that this risk poses sufficient harm to the marketplace to justify any changes to the RPS program. If a genuine and material risk is in fact facing the RPS program, quarterly settlement is only one of many possible solutions. We encourage the DOER to first document the underlying problem and then to engage stakeholders with a range of possible solutions.

TEC's specific responses to DOER's stakeholder questions issued on 11/13/2019 are listed below.

1) DOER is considering requiring 10% of the annual obligation be settled in each of quarter 1, 2, and 3, and requiring the remaining 70% of the annual obligation in Quarter 4. Please explain the positive and negative implications of this weighted approach. If an alternative distribution of annual obligation across the quarters is preferred, please provide details.

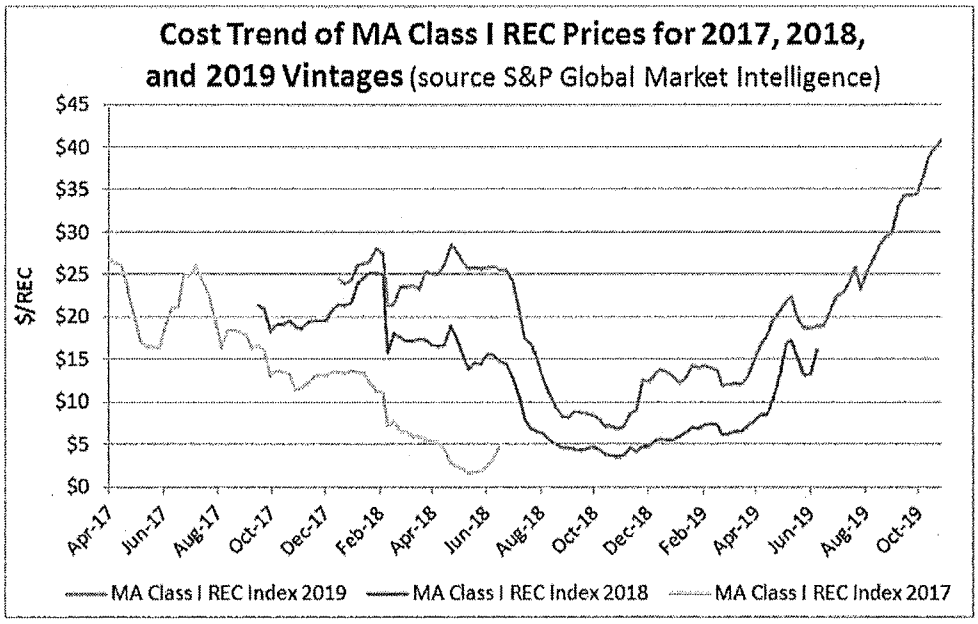
There are several negative implications of this proposal. The first that annual load obligations are not known in quarters 1-3, potentially complicating how a 10% requirement be defined. Second is that the REC market involves considerable time lags. As shown in Figure 1, a REC obligation incurred in the first quarter of 2019 can't be settled with RECs until the third quarter. As a result, a retail energy supplier in severe financial distress could still default on their RPS obligation due to the time lag.

Figure 1



As shown in Figure 2, prices for MA Class I RECs vary widely during their trading periods. Price changes of over $20/REC in a span of six months are not uncommon.

Figure 2



Sophisticated retail energy suppliers that study market dynamics of supply and demand can gain competitive advantage by opportunistically timing their purchases to take advantage of favorable market pricing. This competitive advantage can be significant as the 2020 RPS compliance requirement for MA Class I RECs is 10.58%. A retail supplier that is able to realize a $25/REC savings on its compliance obligation will be able to offer a cost savings of $0.00265/kWh vs. a competitive supplier that acts as a simple price taker. For a large C&I, this savings can translate to tens of thousands of dollars. Since the CES can presently only be satisfied with Class I RECs, the cost advantage to strategic REC buying is likely higher than the value presented above.

If the DOER's proposal had been in effect for the 2017 compliance year, retail suppliers would have been forced to settle a portion of their obligation at REC prices at several multiples of the final settled price. Reportedly, many retail suppliers anticipated this decline in price and waited to purchase RECs.

The market for Class II RECs has been chronically undersupplied for many years with a significant percentage of the annual obligation being met in the form of Alternative Compliance Payments (ACPs).

Since prices for Class II RECs have trended close to the ACP charge, the proposed changes in filing requirements are unlikely to change market prices, but may be extremely difficult to meet with actual RECs due to the seasonal nature of small hydro generation and the scarce liquidity in this market.

2) What potential RPS and energy market implications on Generation Units, Retail Electric Supplier, and other market participants should the Department consider in deciding whether to have more frequent compliance requirements?

A quarterly REC Settlement requirement would harm the RPS market flexibility. As shown in Figure 2, REC markets exhibit significant price volatility and significant arbitrage opportunities.

Requiring quarterly settlement removes flexibility and the relative annual balance between buyers and sellers currently present in the RPS markets. A quarterly settlement could create an opportunity for REC sellers to constrain the availability of RECs in the first three quarters of the market knowing that suppliers have hard requirements to settle and without an ACP alternative. Based on the DOER's questionnaire, it is unclear what the penalty is for failing to settle the quarterly minimum.

Quarterly settlement impinges on flexibility to delay settlement decisions with respect to RECS that qualify in multiple states, timing decisions when actual sales volumes are better known. As Figure 2 illustrates, this is a non-trivial issue. It also creates market inefficiencies regarding certain classes of qualifying facilities where generation output is not consistent on a quarterly basis (e.g., hydro and solar).

Customer load can also exhibit significant seasonal variability and a retail energy supplier's compliance obligation may not be fully known until the end of the year. Based on the materials provided, it's unclear how the DOER would calculate what the 10% value actually is. Especially for the first two compliance filings, estimation of 10% of the compliance amount will involve significant uncertainty.

A quarterly requirement interferes with flexibility for both sellers and buyers to agree on mutually agreeable timing to transact. Such timing is affected by changes in both supply and demand. For example, the demand for RECs is impacted by the almost constant tinkering and updates to RPS and Clean Energy Standard programs by policy makers. This includes changes to annual obligations and to definitions of qualifying facilities, or the creation of new programs.

3) Will an increase in the frequency of compliance filings create additional costs? Please identify, explain, and quantify any additional costs that would be passed on to ratepayers.

The three additional compliance filings are likely to entail several days of analyst time per filing in addition to use of trading resources for three extra compliance periods. While estimating the administration cost burden is rather straightforward based on FTE costs, the costs due to changes in REC market dynamics are very hard to predict, especially early in the year when liquidity may be lower. Retail suppliers are unlikely to eat the additional regulatory burden and will pass this cost on to their customers or reduce their focus on the market in Massachusetts.

While retail energy suppliers accrue cost for RPS obligations, the time lag between accruing the cost and actual purchase and retirement of RECs provides a source of working capital. A more frequent and

earlier obligation to purchase and retire RECs may reduce retail energy supplier working capital and increase their costs of credit which would be passed along to consumers.

If anything, DOER can be assured that risk premiums for RPS cost exposure for fixed price contracts will go up. There are presently three pending rulemakings that will impact RPS costs including: 1) this proceeding, 2) the proposed increase to the CES in 2020; and 3) The Clean Peak Standard.

4) Are there ways in which the DOER could mitigate any identified additional costs of more frequent compliance for market participants and ratepayers?

Absent an exemption for sophisticated retail energy suppliers that can demonstrate a low risk of default, it's unclear how DOER could mitigate the cost impacts of its proposal for three additional compliance filings.

5) Identify alternative compliance mechanisms, besides more frequent compliance requirements that the DOER could implement that would protect against potential impacts of noncompliance?

The best place to screen retail suppliers for default risk is during the supplier licensure process managed by the DPU. During the initial application process, retail energy suppliers should be required to provide an RPS compliance management plan detailing how they intend to meet their compliance obligation as well as their experience managing RPS obligations in other states. During the renewal process, the DPU should collect input from the Attorney General's office regarding supplier behavior in the market place. The DOER could also evaluate if ISO-NE Market and Credit Reports could aid in early identification of Retail suppliers under financial distress. If the DPU determines that there is a risk of default on RPS obligations, then it could require the retail supplier to post financial assurance. Historical defaults should be used to inform DPU's judgement since sophisticated energy suppliers focused on C&I customers exhibit very high rates of compliance.

In the event of a retail supplier default that DOER deems material, DOER could issue a waiver for market participants to increase their banking limits. In doing so, DOER could ensure that unsold RECs could be carried forward to the next compliance year. This would eliminate the risk that REC generators would suffer a financial loss due to the inability to monetize their RECs as a result of a retail supplier default.

6) Please provide any additional information that pertains to the frequency of compliance review that you feel is relevant for the DOER's consideration

The frequency of defaults by retail energy suppliers on RPS compliance is very low and insufficient to justify the proposed rule changes. Furthermore, the lag between the period of service for the retail energy supplier and the REC trading period is such that a financially distressed retail energy supplier may still default on its obligations in the intervening period, even with DOER's proposed additional compliance filings. Lastly, the proposed 10 percent quarterly retirement minimum is likely too small to meaningfully address the DOER's objective of 100% RPS compliance. A higher quarterly percent retirement obligation would further exacerbate the market and liquidity issues outlined above. The low

level of each compliance filing currently proposed by DOER only creates an administrative burden with almost no discernable benefit to the market or regulators.

Items that TEC would like DOER to clarify

1) DOER's questions to stakeholders explicitly references Class I and Class II RECs. Does DOER intend to increase the frequency of compliance filings for SREC I & II, APS, etc. or just Class I and II RECs?

Sincerely,

Mary H Smith for Roger Borghesani

Roger Borghesani, Chairman
The Energy Consortium

nationalgrid

December 3, 2019

Via email to: DOER.RPS@mass.gov

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

Re: National Grid Responses to RPS Frequency of Compliance Stakeholder Questions

Dear Mr. Wassam:

On behalf of Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid ("Company" or "National Grid"), I am pleased to offer National Grid's responses to the Department of Energy Resources' ("DOER") Renewable Portfolio Standard Frequency of Compliance Stakeholder Questions, issued November 13, 2019. DOER's questions indicate that DOER is concerned about potential cases of non-compliance by Retail Electric Suppliers ("RES") with the Renewable Energy Portfolio Standards ("RPS"), 225 C.M.R. 14.00 and 15.00, and is considering amendments to these regulations to change the current annual compliance cycle for RPS Class I and RPS Class II to a more frequent compliance cycle.

National Grid appreciates the impact of RES's potential noncompliance with the RPS. However National Grid believes that a more effective and less costly way to address this concern would be through requiring some form of security posting from non-investment grade RESs, rather than through quarterly compliance filings. If DOER nevertheless wishes to increase the frequency of compliance filings, having semi-annual (as opposed to quarterly) filings would be less costly and less burdensome to all the parties involved in these filings.

National Grid's more detailed responses to DOER's stakeholder questions follows.

Question 1. DOER is considering requiring 10% of the annual obligation be settled in each of quarter 1, 2, and 3, and requiring the remaining 70% of the annual obligation in Quarter 4. Please explain the positive and negative implications of this weighted approach. If an alternative distribution of annual obligation across the quarters is preferred, please provide details.

National Grid Response: National Grid appreciates the potential impact of an RES's noncompliance with the RPS and its effect on meeting the goals of the Commonwealth's Global Warming Solutions Act ("GWSA"). A methodology to identify potential cases of noncompliance would be beneficial. However, National Grid believes that any benefits of the proposed compliance approach are outweighed by the drawbacks. National Grid assumes that quarterly obligations will involve the New England Power Pool Generation Information System ("NEPOOL

GIS") certificate settlements and compliance filing obligations. The Company believes such a structure will increase customers costs and increase the workload of multiple parties. Increased customer costs would result from expected increased procurement costs due to higher Renewable Energy Certificate ("REC") prices and decreased competition as described in the Company's response to Question 2.

The quarterly compliance proposal will increase workload for multiple parties, including the RES, the Department of Energy Resources ("DOER"), and the administrator of NEPOOL GIS. DOER would be required to provide RESs with estimated load obligations to allow RES's to calculate their quarterly RPS obligations for compliance. In addition, DOER will need to complete four quarterly compliance certifications for each RES. NEPOOL GIS would be required to retire certificates quarterly and produce reports identifying these retired certificates on a quarterly basis to support the additional compliance filings. This may also require upgrades to the NEPOOL GIS system which currently retires RECs after the fourth quarter. Finally, each RES will have increased labor expenses due to increased quarterly filings as well as modifications to procurement processes. Regarding the compliance filings, the Company's Energy Procurement and Regulatory departments are involved with the data gathering, processing and certifications required prior to submitting a final compliance filing. The Company anticipates each quarterly filing will involve the same amount of time as the current annual filing. The suggested compliance modifications would also require the Company to revise existing purchasing processes and modify REC delivery requirements contained in future contracts. None of the Company's existing contracts require REC delivery in the first quarter and unfortunately the Company has multiple executed 2020 vintage REC contracts which cannot be modified to require REC deliveries in the first quarter.

Instead, the Company suggests that DOER adopt its proposal included in the Company's response to Question 5 for credit requirements to minimize the risk of a RES's noncompliance with the RPS. However, an additional alternative to the proposed quarterly filing would be a semi-annual filing. A RES could be required to have 25% of its annual obligation settled after the second quarter and the remaining 75% would be settled after the fourth quarter. This structure would lower the additional procurement costs identified in the Company's response to Question 2 and will require less work for all parties.

Question 2. What potential RPS and energy market implications on Generation Units, Retail Electric Supplier, and other market participants should the Department consider in deciding whether to have more frequent compliance requirements?

National Grid Response: The Company expects that quarterly compliance requirements would increase RPS compliance costs due to higher REC prices and decreased competition. The Company currently provides flexibility in delivery of RECs from the REC suppliers. The Company does not require Investment Grade[1] counterparties to deliver RECs until June 1st of a

[1] Investment Grade is a Credit Rating from Moody's Investors Service equal to "Baa3" or higher and/or a Credit Rating from Standard & Poor's Rating Group equal to "BBB-" or higher.

compliance year.[2] The Company currently does not require Non-Investment Grade[3] counterparties to deliver any RECs in the first quarter. The Company requires Non-Investment Grade counterparties to deliver 20% of the total RECs in the second quarter, 40% in the third quarter, and the final 40% in fourth quarter. The proposed quarterly compliance requirements will require Retail Electric Suppliers to locate counterparties who can meet first quarter delivery requirements because the RES must settle 10% of its annual obligation in that quarter.

The majority of the Company's REC purchases are made through a Request for Proposals (RFP) process. The Company would have to revise its RFP and REC purchase agreements to seek first quarter delivery. Frequently, the Company executes transactions prior to a compliance year. For example, in 2019 the Company executed transactions for 2020 RECs. Requiring REC suppliers to deliver in the first quarter may lead to the REC suppliers not participating in the RFP, or adding risk premiums to the prices, because the REC suppliers will not know the exact quantity of RECs it will have until a quarter has occurred. Additionally, the Company believes the prices for SRECs will be particularly impacted. The first quarter (January, February, and March) typically has very low solar generation. MA Solar Carve-Out I generation in the first quarter of 2018 was only 18% of the total 2018 generation. MA Solar Carve-Out II generation in the first quarter of 2018 was only 16% of the total 2018 generation.[4] Low supply, and a new demand requiring first quarter delivery, may lead to higher prices which will passed on to customers.

Question 3. Will an increase in the frequency of compliance filings create additional costs? Please identify, explain, and quantify any additional costs that would be passed on to ratepayers.

National Grid Response: An increase in the frequency of compliance filings will directly increase the quarterly workload for RESs, the administrator of NEPOOL GIS, and DOER. The proposed quarterly compliance filings may also increase overall RPS compliance costs as described in the Company's response to Question 2. The Company's increase in RPS compliance costs will be recovered through the Basic Service rates. Competitive suppliers will include the increased RPS compliance costs in their offers to customers.

Question 4. Are there ways in which the DOER could mitigate any identified additional costs of more frequent compliance for market participants and ratepayers?

National Grid Response: See the Company's response to Question 5 for its preferred alternative proposal to minimize the extra costs of more frequent compliance filings. Additionally, the Company's response to Question 1 includes a less-preferred proposal of semi-annual compliance

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[2] A compliance year ends on June 15th.

[3] The Company identifies counterparties which do not meet the Investment Grade definition stated in footnote 1 as Non-Investment Grade.

[4] See public reports at NEPOOLGIS.com.

filings which would also lower costs as compared to quarterly compliance filings. Removing the first quarter requirement may alleviate the increase in prices due to limited competition and insufficient first quarter REC supply. It also halves the increase in work for various parties that would result from quarterly filings.

Question 5. Identify alternative compliance mechanisms, besides more frequent compliance requirements that the DOER could implement that would protect against potential impacts of non-compliance?

National Grid Response: The Company believes the best approach to ensure RES compliance with the RPS is credit requirements. DOER should require some form of security when a RES commits to provide electricity to Massachusetts customers. The security arrangement should be based on the expected quarterly REC requirement and current market prices. As market prices change each quarter, the posted security would also change. This is not uncommon. A RES usually has credit requirements associated with its purchases of wholesale electricity, ancillary services, and capacity.

Investment Grade companies should not be required to post, which is typical in transactions because Investment Grade companies are less likely to go bankrupt. A Non-Investment Grade RES may provide security through a Parental Guaranty, Letter of Credit, or cash deposit. This proposal is ideal because it does not impact market prices. Additionally, it eliminates a significant amount of increased work associated with the proposed four quarterly filings. Finally, it reduces the impact of noncompliance of a RES on meeting GWSA goals by ensuring security is available to purchase replacement RECs in the event a RES goes bankrupt.

The Company does not believe these credit requirements would adversely affect Non-Investment Grade RES due to the nature of rate setting and the NEPOOL GIS settlement rules. The NEPOOL GIS trading periods lag the actual quarter by several months. For example, RECs to meet RPS obligations from the first quarter would not be available until July 15th. RPS compliance costs are included in customers' monthly energy prices which means that customers January to March payments include the obligations for the required RECs. A Non-Investment Grade RES would use the advanced REC payments from customers to meet its security requirement to the DOER. For example, by April a RES likely would have received REC payments equivalent to the first quarter RPS compliance requirements for its customers. A RES could then use a portion of those payments for security. The remaining portion of those payments could be carried forward to pay for any delivered RECs starting July 15th.

Question 6. Please provide any additional information that pertains to the frequency of compliance review that you feel is relevant for the DOER's consideration.

National Grid Response: The Company agrees with DOER that noncompliance with the RPS is detrimental to the Commonwealth's environmental goals. However, the Company believes credit requirements are more cost-effective and efficient than quarterly obligation filings. Credit

requirements demonstrate that a RES is able to financially perform its RPS responsibilities by requiring security. Credit requirements also avoid the potential increase in REC prices and compliance costs, while maintaining the current annual compliance filing cycle and corresponding workload.

Conclusion

National Grid appreciates the opportunity to comment on these stakeholder questions, and thanks DOER for its consideration of these responses. If you have any questions, please do not hesitate to contact me at 516-545-5403.

Very truly yours,

NATIONAL GRID

Stephen A. McCauley
Director, Wholesale Electric Supply and Environmental Transactions

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF ENERGY RESOURCES

RPS CLASS I REGULATIONS RPS CLASS II REGULATIONS	:	DECEMBER 4, 2019

COMMENTS OF
RETAIL ENERGY SUPPLY ASSOCIATION
RE FREQUENCY OF COMPLIANCE STAKEHOLDER QUESTIONS

The Retail Energy Supply Association ("RESA")[1] hereby submits its comments in response to the Department of Energy Resources' ("Department" or "DOER") November 13, 2019 Frequency of Compliance Stakeholder Questions.[2]

BACKGROUND

Pursuant to existing regulations, all Retail Electricity Suppliers (including distribution companies and competitive suppliers) selling electricity to end-use customers in the Commonwealth are required to provide specific minimum percentages of their electricity supply from renewable energy generation sources.[3] Compliance must be demonstrated annually by July 1 (or the first business day thereafter).[4]

On April 11, 2019, the Department issued a Stakeholder Announcement offering interested stakeholders an opportunity to comment on proposed amendments to the RPS Class I

[1] The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

[2] Frequency of Compliance Stakeholder Questions (Nov. 13, 2019) ("Questions") (available at: https://www.mass.gov/doc/rps-frequency-compliance-stakeholder-questions/download) (last visited Dec. 4, 2019).

[3] *See* 225 C.M.R. 14.00 ("RPS Class I"); 225 C.M.R. 15.00 ("RPS Class II").

[4] *See* 225 C.M.R. 14.09(1); 225 C.M.R. 15.09(1).

and RPS Class II regulations ("Proposed Amendments").[5] RESA submitted comments on the Proposed Amendments.[6]

On November 13, 2019, "[i]n order to identify potential cases of non-compliance by Retail Electric [sic] Suppliers earlier in each compliance year and to limit risks of significant non-compliance and related effects on the Commonwealth meeting its Global Warming Solution Act requirements,"[7] the Department issued the Questions to seek stakeholder feedback on further potential amendments "to change the current annual compliance cycle for RPS Class I and RPS Class II to a more frequent compliance cycle."[8] Specifically, the Department is considering requiring that Retail Electricity Suppliers settle ten percent (10%) of their annual obligation in each of the first three trading quarters.[9] The remaining seventy percent (70%) of the annual obligation would be required in the fourth quarter.[10] RESA now hereby submits its comments in response to the Questions.

COMMENTS

RESA appreciates the Department's desire to limit the risk of potential non-compliance. Instances of non-compliance with the RPS Class I and RPS Class II not only negatively affect the Commonwealth's ability to meet the Global Warming Solutions Act requirements but also undermine consumers' confidence that they will receive the renewable energy content that they

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[5] Stakeholder Announcement (Apr. 11, 2019) (available at: https://www.mass.gov/files/documents/2019/05/15/RPS%20and%20APS%20Stakeholder%20Announcement.pdf) (last visited Dec. 4, 2019), at 6. The deadline to submit comments was subsequently extended. *See* RPS Class I & II Rulemaking, Public Comment Period (available at: https://www.mass.gov/service-details/rps-class-i-ii-rulemaking) (last visited Dec. 4, 2019).

[6] *See* Comments of Retail Energy Supply Association re Class I RPS Rulemaking (Jul. 26, 2019); Comments of Retail Energy Supply Association re Class II RPS Rulemaking (Jul. 26, 2019).

[7] Questions.

[8] *Id.*

[9] *See* Question 1 ("DOER is considering requiring 10% of the annual obligation be settled in each of quarter 1, 2, and 3, and requiring the remaining 70% of the annual obligation in Quarter 4.") ("Compliance Frequency Proposal").

[10] *Id.*

expect. However, the overwhelming majority of Retail Electricity Suppliers appear to meet their compliance obligations.[11] The Compliance Frequency Proposal, however, would have a significant, disruptive effect on the ***entire*** retail electricity supply sector and would impose a burden on ***all*** suppliers - even those complying with their obligations. Thus, RESA urges the Department to forgo adopting the Compliance Frequency Proposal and to adopt a proposal that would limit the risks of significant non-compliance without disrupting retail electric supply markets or negatively affecting Retail Electricity Suppliers with a proven track record of compliance.

I. THE COMPLIANCE FREQUENCY PROPOSAL WILL ADD UNNECESSARY COMPLEXITY AND COST

Questions 1 through 4 request information about the various potential implications and cost impacts of the Compliance Frequency Proposal.[12] The Department's proposal would have significant adverse effects on Retail Electricity Suppliers and the market for renewable energy certificates ("RECs") and would impose significant additional costs on customers.

As a preliminary matter, Retail Electricity Suppliers have devoted considerable effort to developing strategies for complying with their RPS Class I and RPS Class II obligations. These strategies may include purchasing and retiring RECs during the current compliance year, relying

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[11] *See, e.g.*, Massachusetts 2016 Renewable Portfolio Standard (RPS) and Alternative Portfolio Standard (APS) Annual Compliance Report (Dec. 27, 2018) (available at: https://www.mass.gov/files/documents/2019/01/22/RPS-APS%202016%20Annual%20Compliance%20Report%20FINAL_REV1.pdf) (last visited Dec. 4, 2019) ("2016 Annual Compliance Report"), at 5 (reporting that, for compliance year 2016, out of sixty-six Retail Electricity Suppliers, sixty-five met their compliance obligations).

[12] *See* Question 1 ("DOER is considering requiring 10% of the annual obligation be settled in each of quarter 1, 2, and 3, and requiring the remaining 70% of the annual obligation in Quarter 4. Please explain the positive and negative implications of this weighted approach. If an alternative distribution of annual obligation across the quarters is preferred, please provide details."); Question 2 ("What potential RPS and energy market implications on Generation Units, Retail Electricity Supplier, and other market participants should the Department consider in deciding whether to have more frequent compliance requirements?"); Question 3 ("Will an increase in the frequency of compliance filings create additional costs? Please identify, explain, and quantify any additional costs that would be passed on to ratepayers."); Question 4 ("Are there ways in which the DOER could mitigate any identified additional costs of more frequent compliance for market participants and ratepayers?").

on previously banked RECs,[13] and making alternative compliance payments ("ACPs").[14] Moreover, Retail Electricity Suppliers that purchase and retire RECs during the current compliance year may use various procurement strategies to do so, including making purchases of RECs in regular amounts and at regular intervals throughout the calendar year, purchasing RECs when prices fall to certain levels regardless of the time of year, and entering into long-term contracts to secure supplies of RECs at set prices years before the RECs are actually generated. A common contracting practice is to take delivery of RECs just prior to the end of the particular compliance year rather than throughout the year. The Compliance Frequency Proposal has the potential to upend these carefully developed strategies and to impose additional costs that would ultimately be borne by customers.

A. The Compliance Frequency Proposal Raises Substantial Compliance Questions

The Compliance Frequency Proposal raises significant questions about the means by which Retail Electricity Suppliers will be able to demonstrate compliance with RPS Class I and RPS Class I requirements. For instance, the Compliance Frequency Proposal does not identify how the quarterly compliance obligations would be calculated.

The Compliance Frequency Proposal contemplates requiring the settlement of set percentages of the annual RPS Class I or RPS Class II obligations in each quarter.[15] However, the report of electrical energy sales required to calculate those annual obligations is not available

[13] *See* 225 C.M.R. 14.08(2); 225 C.M.R. 15.08(2).

[14] *See* 225 C.M.R. 14.08(3); 225 C.M.R. 15.08(3).

[15] *See* Question 1 ("DOER is considering requiring 10% of the annual obligation be settled in each of quarter 1, 2, and 3, and requiring the remaining 70% of the annual obligation in Quarter 4.").

until the year ***following*** the applicable compliance year[16]— well after the time at which it would need to be known if a percentage of those obligations needs to be settled during the actual compliance year.[17] If the Compliance Frequency Proposal is adopted, what will suppliers use to determine their expected annual load? Will the Department provide this information[18] or will the suppliers be required to obtain it from another source? If the latter, what will that source be? Will it be the same source as that used to calculate the total load obligation at the end of the year? If not, will suppliers be deemed to be out of compliance if their year-end load ends up higher and, as a consequence, they settled less than ten percent (10%) of that obligation in each of the first three quarters of the year? If so, what are the consequences of such non-compliance? How will the quarterly obligation account for customer migration? For instance, if a supplier suddenly has an influx of customers during the second quarter, its annual load could end up significantly higher. What happens if, as a consequence, by the third quarter, the supplier realizes that it did not settle sufficient RECs in first quarter?

Uncertainty about compliance obligations in the first three quarters will complicate Retail Electricity Suppliers' efforts to comply with the RPS Class I and the RPS Class II. Although the Department could address the uncertainty by calculating those obligations, this would impose additional administrative burdens on the Department, the electric distribution companies ("EDCs") and competitive suppliers. The Department has developed a detailed process for

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[16] *See* Renewable & Alternative Energy Portfolio Standards Guideline for Retail Electricity Suppliers on the Determination of Sales to End-Use Customers for Calculating Their Annual RPS & APS Obligations (May 24, 2012) (available at: https://www.mass.gov/doc/rps-compliance-basis-guideline-52412/download) ("Sales Determination Guideline") (last visited Dec. 4, 2019), at 2 (noting that the Department will send each Retail Electricity Supplier its load obligation spreadsheet "as early as possible during the first half of the fourth quarter Certificate Trading Period 3, i.e., no later than May 15th.") (footnote omitted).

[17] *See* Question 1 ("DOER is considering requiring 10% of the annual obligation be settled in each of quarter 1, 2, and 3, and requiring the remaining 70% of the annual obligation in Quarter 4.").

[18] *See* Sales Determination Guideline, at 2 (noting that the Department will send each Retail Electricity Supplier its load obligation spreadsheet).

calculating Retail Electricity Suppliers' annual compliance obligation.[19] This process includes the provision of data by the EDCs to the Department, the Department's use of that data to prepare spreadsheets for competitive suppliers, and competitive suppliers' review and verification of those spreadsheets.[20] Although the Department could use this same process for determining each supplier's quarterly obligation, doing so would significantly increase the administrative burden associated with RPS Class I and RPS Class II compliance—a burden that all Retail Electric Suppliers would be forced to bear, even those who have consistently demonstrated compliance with the RPS Class I and RPS Class II obligations.

Moreover, the Compliance Frequency Proposal does not define how the quarterly compliance obligations could be satisfied. For instance, will Retail Electric Suppliers simply need to establish quarterly compliance with the overall RPS Class I and RPS Class II obligations? Or will Retail Electric Suppliers need to establish quarterly compliance with each individual component (including the Solar Carve-out and the RPS Class II Waste Energy Minimum Standard) of these obligations? Applying a quarterly compliance obligation to the particular components of the general obligation could exacerbate limitations on the supply of applicable RECs during particular quarters. For example, because solar facilities tend to generate less energy in the winter months than in the summer months because of seasonal variation in day-length, the number of solar RECs available in the quarters containing winter months could be constrained. Seasonal fluctuations in generation is even larger in the case of hydroelectric,[21] where, because of seasonal snow melt, output in the spring months far exceeds output in the summer and early fall. If Retail Electricity Suppliers are required to settle solar and hydro RECs

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[19] *See id.*

[20] *See id.*

[21] *See* 2016 Annual Compliance Report, at 34 (Table K) (indicating that, for 2016, 93.6% of the RPS Class II compliance was met with hydropower generation).

during those quarters, the limited supply of such RECs could lead to significant increases in the prices of those RECs up to the full ACP rate (or beyond if the ACP is not available to satisfy these quarterly obligations)—once again, increasing the cost of compliance for all suppliers (even those who have consistently demonstrated compliance with the RPS Class I and RPS Class II obligations) and, ultimately, the prices paid by all ratepayers (even those served by suppliers who have consistently demonstrated compliance with the RPS Class I and RPS Class II obligations).

B. The Compliance Frequency Proposal Fails To Address ACPs and Banking

Currently, Retail Electricity Suppliers are able to meet their RPS Class I and RPS Class II obligations through ACPs and banked RECs.[22] However, the Compliance Frequency Proposal does not appear to contemplate the use of ACPs or banked RECs to satisfy the proposed quarterly and, perhaps even the annual, RPS Class I or RPS Class II obligations.[23]

The Department should continue to permit the use of ACPs to satisfy the RPS Class I and RPS Class II obligations, no matter how frequently compliance is required. Without an ACP, in quarters or years where there are not sufficient RECs available to permit all Retail Electricity Suppliers to meet their compliance obligations, there will be no other manner in which to achieve compliance; thereby, creating market uncertainty. Moreover, even in quarters or years where there may be sufficient RECs available, if they are controlled by a small number of generators,[24] those generators would be able to exert significant market power over those certificates since generators would still be free to sell certificates throughout the annual trading period whereas

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[22] *See* 225 C.M.R. 14.08(2), (3); 225 C.M.R. 15.08(2), (3).

[23] *See* Question 1 ("DOER is considering requiring 10% of the annual obligation be ***settled*** in each of quarter 1, 2, and 3, and requiring the remaining 70% of the annual obligation in Quarter 4.") (emphasis added).

[24] *See, e.g.*, Mass. Gen. Laws Ch. 25A, § 11F(d) (specifying that "a Class II renewable energy generating source is one that began commercial operation before December 31, 1997").

suppliers would have certain fixed quarterly purchase obligations. The consequence will be higher costs that will ultimately be borne by ratepayers.

An ACP is an important mechanism for controlling the RPS Class I and RPS Class II compliance costs that are ultimately included in the prices charged to ratepayers. An ACP recognizes that there may not be sufficient RECs available in the market at a reasonable price and, as a practical matter, places a ceiling on the price of RECs. In doing so, it avoids a small number of generators being able to artificially increase the price of certificates above a certain threshold; thereby, protecting consumers from having to bear the expense for renewable energy at any price. For instance, if only two generators are eligible, those two generators may not be able to produce a sufficient number of RECs for all of the Retail Electricity Suppliers to satisfy their RPS Class I and RPS Class II obligations. This will send a signal to the market that more renewable generation is necessary. However, without an ACP, the cost of that new generation will not be capped in any way; thus, suppliers could end up paying exorbitant prices for RECs to satisfy their compliance obligations with those costs ultimately being borne by ratepayers. By continuing to permit the use of an ACP to satisfy all RPS obligations, no matter how frequently compliance is required, the Department can ensure that the RPS Class I and RPS Class II do not cost ratepayers more than is necessary.

Similarly, the Department should continue to permit the use of banked RECs to satisfy the RPS Class I and RPS Class II obligations, no matter how frequently compliance is required. Banking allows Retail Electricity Suppliers to meet their obligations in the most efficient and cost effective way and to manage their obligations as the amount of load they serve changes. Without banking, the market for RECs will be limited not only by the number of renewable energy generators but also by time. At times when REC prices are low, Retail Electricity

Suppliers are able to purchase additional quantities of RECs (in addition to the quantities that they need for their current compliance obligations) and bank these RECs for future compliance. Doing so allows suppliers to control their compliance costs, which are ultimately included in the prices charged to customers. In fact, the possibility of using banked RECs in a quarterly compliance paradigm is particularly important because it would allow Retail Electricity Suppliers to acquire certain RECs whose production varies over the course of a year (such as solar RECs) at times when there is an ample supply of such RECs for compliance when far fewer quantities of such RECs may be available. When supply is limited, prices increase. In order to provide a hedge against those price increases, the Department should continue to permit Retail Electricity Suppliers to rely upon banked RECs to satisfy their RPS Class I and RPS Class II obligations, no matter how frequently compliance is required.

Even if the Department continues to permit Retail Electricity Suppliers to satisfy their RPS Class I and RPS Class II obligations through the use of ACPs and banked RECs, this still leaves open questions about how Retail Electricity Suppliers will be able to take advantage of those mechanisms if the Compliance Frequency Proposal is adopted. For example, if there are not sufficient RECs available during the first quarter and a supplier pays an equivalent ACP (i.e., ten percent (10%) of the ACP for the annual compliance obligation), could it receive a refund if it later settles sufficient RECs to meet its entire annual obligation? If not, the cost of compliance will be higher because suppliers will be forced to pay the highest price for compliance (i.e., the ACP) and will not be able to mitigate that cost by later purchasing RECs to satisfy those obligations. Those higher compliance costs will then be passed onto ratepayers in the prices they pay for retail electric supply.

C. The Compliance Frequency Proposal Will Fundamentally Alter REC Trading

Currently, Retail Electricity Suppliers are not required to purchase and retire RECs at any set time during the year so long as they have purchased and retired sufficient RECs to satisfy their obligations before the last day of the trading period of any given year. As a result, those selling RECs are not guaranteed any specific level of demand at any point during the year. Consequently, those selling RECs must maintain competitive pricing levels throughout the entire annual trading period. Conversely, the Compliance Frequency Proposal would create specific levels of demand for RECs in the first three quarters. Under basic principles of supply and demand, increased demand for RECs at those times will lead to increased prices. These price increases could be particularly acute if, because of operational issues (such as reduced solar production in the winter), there is a limited supply of RECs available at any of those times.[25] Ultimately, customers will bear these added costs as they are incorporated into Basic Service rates[26] and retail supply prices.

Further, the Compliance Frequency Proposal would disrupt existing REC procurement strategies and frustrate compliance efforts that Retail Electricity Suppliers may have undertaken already. As part of their compliance efforts, some Retail Electricity Suppliers enter into contracts for RECs well in advance of the compliance deadlines. In fact, some of these contracts are long-term contracts that provide for the delivery of RECs in multiple future compliance years. These contracts, however, have been designed to provide for compliance under the current annual compliance schedule, with RECs generally delivered only at the end of the trading period for the entire compliance year. If the Compliance Frequency Proposal is adopted, Retail Electricity

[25] The Compliance Frequency Proposal could have additional ramifications for facilities that generate renewable energy that could further impact the availability and pricing of RECs of which RESA is unaware.

[26] *See, e.g.*, Docket DTE 03-88A-F, Settlement Agreement (Jan. 21, 2005) (agreeing to collect renewable portfolio standard costs through Basic Service rates).

Suppliers that worked proactively to meet their compliance obligations and contracted to procure a sufficient supply of RECs by the annual compliance date would be required to contract for additional RECs (or to negotiate changes to their REC supply contracts) to meet their quarterly compliance obligations. Doing so, however, could impose additional costs on these Retail Electricity Suppliers. These costs ultimately would be borne by ratepayers as they are incorporated into Basic Service rates[27] and retail supply prices. As a consequence, suppliers engaged in behavior intended to ensure their compliance will be placed at a competitive disadvantage vis-à-vis suppliers who have not undertaken such efforts; thereby, punishing the very behavior the Department should be seeking to encourage.

Moreover, the Compliance Frequency Proposal would have broad implications for the REC market – a market that is generally run on a regional basis.[28] Currently, many RECs are not delivered until June of the year following the compliance year (shortly before compliance reports are due on July 1).[29] While the REC trading and delivery mechanisms may be able to be modified to accommodate the Compliance Frequency Proposal, those changes would fundamentally alter the way in which the REC trading market operates – a market that it is not limited to Massachusetts. Further, implementing these changes would likely impose transaction costs[30] that, ultimately, would be incorporated into the prices that customers pay for retail electricity products.

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[27] *Id.*

[28] *See* NEPOOL Generation Information System (https://www.nepoolgis.com/) ("The **New England Power Pool Generation Information System** (NEPOOL GIS) issues and tracks certificates for all MWh of generation and load produced in the ISO New England control area, as well as imported MWh from adjacent control areas.") (emphasis in original) (last visited Dec. 4, 2019).

[29] *See* 225 C.M.R. 14.09(1) (establishing the deadline for compliance reports); 225 C.M.R. 15.09(1) (same).

[30] *See, e.g.*, Exchange and Clearing Transaction Fee Schedule for Nodal Exchange Options (available at: https://www.nodalexchange.com/wp-content/uploads/Transaction-Fee-Scheudle-Environmental-Options.pdf) (identifying certain costs associated with certain REC transactions) (last visited Dec. 4, 2019).

II. THE DEPARTMENT SHOULD ADOPT A PROPOSAL THAT FOCUSES ON RETAIL ELECTRICITY SUPPLIERS MOST AT RISK OF NON-COMPLIANCE

Question 5 requests alternative proposals that could be implemented to protect against the potential effects of non-compliance.[31] An appropriate alternative compliance mechanism would focus on the Retail Electricity Suppliers most at risk of non-compliance. Further, it would do so in a way that does not impose substantial added costs or burdens on Retail Electricity Suppliers that continuously meet their obligations. Accordingly, RESA offers the following as a potential alternative:

- Quarterly reporting should not be generally required for all Retail Electricity Suppliers. If a Retail Electricity Supplier has met its obligations for five (5) consecutive years, it should not be subject to a quarterly reporting requirement.

- Any Retail Electricity Supplier that has not met its obligations for five (5) consecutive years (i.e., a Retail Electricity Supplier that has not operated in Massachusetts for five (5) consecutive years or that has failed to meet its obligation in one of the preceding five (5) years) should be required to submit, on a quarterly basis (in each of the first three quarters), a quarterly report, including a certification similar to that required for the annual compliance filing,[32] identifying the Retail Electricity Supplier's projected sales and describing how the Retail Electricity Supplier intends to comply with its obligations. Such quarterly reporting obligation would continue until the Retail Electricity Supplier demonstrated compliance with the RPS Class I and RPS Class II obligations for five (5) consecutive years.

- If any quarterly report shows the potential for non-compliance, the Retail Electricity Supplier should be required to demonstrate that it has purchased RECs sufficient to meet ten percent (10%) of its projected annual obligation or to provide financial security in an amount equal to ten percent (10%) of the amount of the ACP needed to satisfy its projected annual obligation.

- In lieu of providing a quarterly report, any Retail Electricity Supplier subject to the quarterly reporting requirement, should be permitted to demonstrate that it has purchased RECs sufficient to meet ten percent (10%) of its projected annual obligation or to provide financial security in an amount equal to ten percent (10%) of the amount of the ACP needed to satisfy its projected annual obligation.

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[31] *See* Questions ("Identify alternative compliance mechanisms, besides more frequent compliance requirements that the DOER could implement that would protect against potential impacts of noncompliance?").

[32] *See, e.g.*, 2018 RPS/APS/CES Annual Compliance Workbook (available at: https://www.mass.gov/doc/2018-rpsapsces-annual-compliance-workbook) (last visited Dec. 4, 2019), Certification and Statement of Authorization.

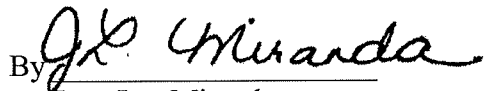
- If any year-end or annual compliance report shows that a Retail Electricity Supplier did not comply with its annual obligations, the Retail Electricity Supplier should be required to demonstrate, in the first quarter of the next year, that it has settled RECs sufficient to satisfy ten percent (10%) of its projected annual obligation for the following year or to provide financial security in an amount equal to ten percent (10%) of the amount of the ACP needed to satisfy its projected annual obligation for that following year. If the Retail Electricity Supplier is able to do so, it should then be subject to the quarterly reporting requirement for the remainder of the year and such quarterly reporting obligation would continue until the Retail Electricity Supplier demonstrated compliance with the RPS Class I and RPS Class II obligations for five (5) consecutive years.

This alternative will ensure that Retail Electricity Suppliers that have a substantiated record of complying with the RPS Class I and the RPS Class II are not subject to undue burdens and their customers are not subject to unnecessary costs. Further, it will also ensure that the Department receives timely information about potential non-compliance and that action to mitigate potential non-compliance is taken.

CONCLUSION

RESA urges the Department to forgo adopting the Compliance Frequency Proposal and to adopt a proposal that would limit the risks of significant non-compliance without disrupting retail electric supply markets or negatively affecting Retail Electricity Suppliers with a proven track record of compliance. However, because any proposal to increase the frequency with which some or all Retail Electricity Suppliers would need to demonstrate compliance with the RPS Class I and RPS Class II obligations could have significant operational, market, and customer impacts, RESA recommends that the Department schedule a stakeholder meeting to allow for discussion and further input on any alternative proposals, including the one proposed by RESA, before developing draft regulations incorporating such a proposal for stakeholder review and comment.

Respectfully submitted,
RETAIL ENERGY SUPPLY ASSOCIATION

By 

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