COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF ENERGY RESOURCES

MASSACHUSETTS CLEAN PEAK STANDARD	:	FEBRUARY 5, 2019

COMMENTS OF
RETAIL ENERGY SUPPLY ASSOCIATION
RE STAKEHOLDER QUESTIONS

The Retail Energy Supply Association ("RESA")[1] hereby submits its comments in response to the Department of Energy Resources' ("Department" or "DOER") January 16, 2019 Stakeholder Questions ("Questions"). RESA appreciates the opportunity to comment on this important matter.

INTRODUCTION

RESA is a non-profit organization and trade association that represents the interests of its members in regulatory proceedings in the Mid-Atlantic, Great Lakes, New York and New England regions. RESA members are active participants in the retail competitive markets for electricity, including the Massachusetts retail electric market. Several RESA member companies are licensed by the Department of Public Utilities ("DPU") to serve residential, commercial and industrial customers in Massachusetts and are presently providing electricity supply to customers in the State. As such, RESA and its members have an interest in ensuring that the creation of the

[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.

new Clean Peak Standard program ("Program") does not have an adverse effect on RESA members, their customers or the continued success of the retail electric market in Massachusetts.

BACKGROUND

On August 9, 2018, Governor Baker signed into law An Act to Advance Clean Energy[2] ("Act"), which directed the Department to develop a program requiring retail electricity providers to meet a baseline minimum percentage of sales with qualified clean peak resources that dispatch or discharge electricity to the electric distribution system during seasonal peak periods, or alternatively, reduce load on the system.[3] Pursuant to the Act, the Department is charged with developing regulations that establish:

- seasonal peak periods;
- a minimum standard for retail electricity providers;
- a value for clean peak certificates by creating an alternative compliance payment rate and potentially other mechanisms; and
- a metering and verification protocol to ensure that all data is collected, reviewed and reported in a consistent manner.[4]

After reviewing available information, the statutory definition of clean peak resource,[5] and a number of other factors, the Department determined that approximately 0 MWh were being served by existing clean peak resources during peak load hours as of December 31, 2018, and established the 2019 Minimum Standard percentage requirement at zero percent (0%).[6] However, any clean peak resource with a commercial operation date on or after January 1, 2019 that meets the standards of a clean peak resource during a seasonal peak period (as defined in the

[2] Chapter 227 of the Acts of 2018.

[3] *Id.* at § 13(a).

[4] *Id.* at § 13(c).

[5] *See id.* at § 7 (defining clean peak resource as: "a qualified RPS resource, a qualified energy storage system or a demand response resource that generates, dispatches or discharges electricity to the electric distribution system during seasonal peak periods, or alternatively, reduces load on said system.").

[6] *See* Establishment of Clean Peak Energy Standard Baseline and 2019 Minimum Standard E-mail Correspondence from Michael Judge, Director, Renewable and Alternative Energy Division, Department of Energy Resources to Clean Peak Energy Standard Stakeholders (Dec. 31, 2018) ("DOER CPS E-mail").

Clean Peak Standard regulations) may be permitted to generate clean peak certificates[7] that can be purchased in compliance year 2019 for use towards compliance requirements in 2020 or 2021.[8]

On January 16, 2019, the Department issued the Questions.[9] RESA hereby submits its comments in response to the Questions.

COMMENTS

Generally, RESA and its members support the development of the Clean Peak Standard and can be a conduit for the Program's success through the development and offering of innovative, renewable and demand response products that aid in addressing system peaks. However, in order to mitigate the effects of the new Program and control ratepayer costs, as discussed more fully below, RESA urges the Department to ensure that the Program design avoids locking ratepayers into long-term commitments, provides for as much quantity and cost certainty as possible, and is developed prospectively and in a competitively neutral manner.

I. THE ELECTRIC DISTRIBUTION COMPANIES SHOULD NOT ENTER INTO LONG-TERM CONTRACTS FOR CLEAN PEAK RESOURCES.

Pursuant to the Act, in establishing certificate values, the Department "***may*** include a process by which electric distribution companies competitively procure clean peak certificates from clean peak resources and enter into long-term contracts, subject to the approval of the department of public utilities."[10] However, since long-term contracts are not required, RESA urges the Department to refrain from establishing such a process.

[7] Chapter 227 of the Acts of 2018, § 7 (defining clean peak certificate as: "a credit received for each megawatt hour of energy or energy reserves provided during a seasonal peak period that represents a compliance mechanism.").

[8] DOER CPS E-mail.

[9] *See, generally*, Questions.

[10] Questions, at 4 (emphasis added); Chapter 227 of the Acts of 2018, § 13(c) (same).

There are several misconceptions about long-term contracts. The first is that long-term contracts are needed to foster generation development. This is simply inaccurate. Numerous resources have been built using market-based mechanism, including the renewable energy portfolio standards ("RPS"),[11] alternative energy portfolio standard ("AES")[12] and Clean Energy Standard ("CES").[13] Moreover, renewable energy technology is constantly evolving and improving as the industry innovates and develops cheaper ways to produce electricity. If the electric distribution companies ("EDCs") are locked into long-term contracts, however, customers will be forced to pay too much and will be prevented from benefiting from lower cost renewable sources that may become available over time. In addition, long-term commitments put the Commonwealth in the position of picking winners and losers and effectively shutting various competitors out of the market for an extended period of time; thereby, limiting the availability of clean peak resources today and into the future. Thus, entering into long-term commitments for clean peak resources leaves little (if any) flexibility to pursue cheaper, cleaner technologies when they become available.

The second misconception is that long-term contracts will reduce prices. This is also inaccurate. Resource owners are no more anxious than any other entity to be the party left holding the risk of accepting contract terms less favorable than they would receive from selling on a shorter term basis in the market. Thus, resource owners will build these risks into the prices at which they are willing to enter into long-term contracts for clean peak resources. As a

[11] *See* 225 C.M.R. 14.00 *et seq.*; 225 C.M.R. 15.00 *et seq.*

[12] *See* 225 C.M.R. 16.00.

[13] *See* 310 C.M.R. 7.75.

consequence, the prices of these long-term commitments will likely be at or near the alternative compliance payment ("ACP");[14] thereby, increasing costs to ratepayers.

This effect will be exacerbated by the risk associated with customer migration. Prior to restructuring, when a regulated utility was the monopoly supplier to retail customers, it did not face a migration risk if it entered into long-term commitments and then prices fell. Today, if the EDCs predict higher long-term prices for clean peak resources and the market brings lower prices, ratepayers will be locked in to higher prices for several years. In that case, customers will have an incentive to migrate to competitive suppliers, leaving the EDCs to recover the cost of above-market commitments from their remaining Basic Service customers.[15] EDC attempts to collect this amount from a shrinking pool of Basic Service customers will raise rates even further and, in turn, induce further migration away from Basic Service. As a consequence, a smaller and smaller group of customers will be paying for these long-term commitments over time.

Moreover, even EDC long-term commitments that turn out to be below market prices for an extended period are problematic. First, they could have a negative effect on retail competition. Electric suppliers are justifiably very hesitant to enter a market and make the necessary long-term investment where there is regulatory uncertainty in the form of an ever lingering possibility that an EDC may be permitted to enter into ratepayer-subsidized long-term contracts that could substantially erode market incentives for customers to choose competitive supply. Further, creating a disconnect between retail prices and the actual market for clean peak resources will send inaccurate price signals to customers about the costs of these resources and their impact on

[14] The ACP will be the benchmark used by retail electricity provides to price the clean peak standard compliance obligation.

[15] 220 C.M.R. 17.06 (only permitting the net costs associated with long-term renewable energy contracts to be collected in non-bypassable rates to the extent the EDCs sell the energy into the wholesale markets and sell the renewable energy credits ("RECs") through a competitive bid process).

customer bills. As a consequence, customers may not take steps to reduce consumption during peak periods; thereby, undermining the intent of the Program.

Long-term EDC contracts will also increase costs to ratepayers served by competitive suppliers by reducing the number of clean peak certificates available during periods of scarcity. This will force suppliers to buy clean peak certificates at prices at or near the ACP or limit supplier investment in clean peak certificates because the prices for those resources are higher than the ACP.

The third misconception about long-term contracts is that they will smooth price fluctuations. However, any fixed position is a hedge that carries with it inherent risks. Even if prices remain low for the duration of the contract periods, after the terms expire, customers may experience rate shocks from delayed price volatility associated with clean peak certificates. Thus, RESA urges the Department to forego long-term contracts in favor of a market based approach similar to that used for the RPS,[16] AES,[17] and CES,[18] which allow for technology development without long-term contracts. In this way, the Department can capture market efficiencies and avoid shifting risks from resource owners to consumers.

II. THE MINIMUM STANDARD SHOULD BE FIXED AND PREDICTABLE

For 2019, the Department established a baseline Minimum Standard requirement of zero percent (0%).[19] In each subsequent year, DOER is required to establish a Minimum Standard requirement for retail suppliers that increases at a rate of at least 0.25% of total retail sales annually.[20]

[16] *See* 225 C.M.R. 14.00 *et seq.*; 225 C.M.R. 15.00 *et seq.*
[17] *See* 225 C.M.R. 16.00.
[18] *See* 310 C.M.R. 7.75.
[19] *See* DOER CPS E-mail.
[20] Chapter 227 of the Acts of 2018, § 13(a).

In the Questions, the Department asked what methodology it should "use to establish post-2019 Minimum Standard (e.g. fixed annual requirements in a published schedule, supply reactive formula, other)?"[21] Similar to other states, the Department should publish predictable quantity and ACP schedules to allow businesses to manage their affairs more effectively and reduce risk premiums; thus, mitigating costs. A formula or other methodology that fails to provide an easy and predictable method for determining compliance creates uncertainty that forces suppliers to estimate their compliance obligations and to include a significant premium in what they charge consumers to protect against that risk; thereby, increasing prices to ratepayers. Furthermore, if the compliance obligation is ultimately less than the Suppliers estimated, customers will have paid more for Program compliance than was actually necessary.

Conversely, by providing quantity and cost certainty, the Department can eliminate risk premiums associated with such uncertainty - resulting in lower prices for consumers. Thus, RESA urges the Department to provide both quantity and cost certainty regarding the Program's compliance obligations. Otherwise, customer contracts are likely to include a substantial risk premium to protect suppliers from future quantity risk. In particular, RESA requests that the Department adopt one of the following two proposals to eliminate or, at least, mitigate the uncertainty associated with the annual compliance obligation.

First, rather than using a formula or other methodology with unknown and unpredictable variables to calculate the compliance obligation, RESA proposes that the Department provide a schedule that allows suppliers to know ***with certainty*** at the time the Program regulations are adopted what their compliance obligations will be for the life of the Program. Such certainty will allow suppliers to make appropriate forward clean peak certificate contracting decisions and

[21] Questions, at 4 (Question 32).

eliminate the need to include risk premiums in their customer contracts to cover quantity uncertainty.

Alternatively, if the Department requires flexibility to respond to changing conditions or to balance supply and demand, RESA proposes that, at the time the Program regulations are adopted, the Department publish a schedule that establishes the compliance obligation for at least the first three (3) years of the Program and then, each subsequent year, establish the compliance obligation for the compliance year three (3) years forward. If the Department does not provide quantity certainty for several years, customers with multi-year fixed price arrangements[22] will still be faced with increased risk premiums to account for the quantity uncertainty in the later years of those agreements. Conversely, by establishing a three (3) year forward compliance obligation, the Department can eliminate this risk premium in the majority of customer contracts.

Moreover, no matter which of these methodologies the Department adopts, it should establish an ACP schedule that extends at least ten (10) years into the future as it has done with other programs.[23] Otherwise, suppliers will be faced with a constantly moving target that will not permit them to appropriately price their products. As a consequence, customers will always be subject to a significant risk premium as suppliers attempt to ensure they have adequately covered the costs of Program compliance.

III. THE MINIMUM STANDARD SHOULD REASONABLY BALANCE EXPECTED SUPPLY AND DEMAND

Pursuant to the Act, the Department is required to establish a Minimum Standard requirement for retail suppliers that increases at a rate of at least 0.25% of total retail sales

[22] *See* Energy Switch Massachusetts website (available at: http://www.energyswitchma.gov) (displaying multiple fixed price offers that extend thirty-six (36) months into the future) (last visited Feb. 4, 2019).

[23] *See* Solar Carve-out (SREC) and Solar Carve-out II (SREC II) Current Status, Alternative Compliance Payment Rates and SREC I and II Auction Rates (available at: https://www.mass.gov/service-details/solar-carve-out-srec-and-solar-carve-out-ii-SREC II-current-status) (providing schedule for the Solar Carve-out and Solar Carve-out II ACP Rates in effect for every Compliance Year through 2029) (last visited Feb. 4, 2019).

annually.[24] In the Questions, the Department asked "[h]ow large should the minimum standard be?"[25]

The Commonwealth already has a myriad of programs intended to promote the development and use of clean resources. In fact, it has two RPS obligations – one for Class I[26] and one for Class II.[27] The Class I renewable standard has two carve-outs – one for Solar Carve-out Renewable Generation Units and another for Solar Carve-out II Renewable Generation Units.[28] There is also an AES[29] and a CES.[30] In addition, the Commonwealth has established EDC procurement programs for clean resources.[31] Each of these mandates adds costs to ratepayer bills that cannot be as effectively managed or hedged as the commodity itself. As a consequence, with each new program, the opportunities for customers to save on their electric bills are reduced. Thus, RESA requests that the Department set the Minimum Standard for this Program as low as is reasonably possible. This is especially important in the early years of the Program. During these years, the Department should tightly align the Minimum Standard with the available supply of clean peak resources and reasonably expected incremental capacity. Otherwise, demand will far outpace supply. As a consequence, retail electricity providers will forego purchasing clean peak certificates because the prices for those resources will be higher than the ACP.

[24] Chapter 227 of the Acts of 2018, § 13(a).
[25] Questions, at 5 (Question 33).
[26] 225 C.M.R. 14.00 *et seq.*
[27] 225 C.M.R. 15.00 *et seq.*
[28] 225 C.M.R. 14.00 *et seq.*
[29] 225 C.M.R. 16.00 *et seq.*
[30] 310 C.M.R. 7.75.
[31] Chapter 188 of the Acts of 2016 (inserting sections 83B, 83C & 83D into the Green Communities Act); 225 C.M.R. 20 *et seq.* (solar Massachusetts renewable target ("SMART") program regulations).

IV. THE DEMAND RESPONSE CARVE-OUT SHOULD BE WELL DEFINED AND PREDICTABLE

The DOER is also required to establish "a minimum percentage of clean peak certificates that must be derived from demand response resources."[32] In the Questions, the Department asked how it should interpret this requirement[33] and what methodology it should use to establish the carve-out.[34]

First and foremost, the Department should clearly define what will qualify as a demand response resource. The Act defines a demand response resource as:

> changes in electric usage by end-use customers in the commonwealth from their normal consumption patterns in response to: (i) changes in the price of electricity over time, including, but not limited to, time-of-use rates for residential and small commercial and industrial customers; or (ii) incentive payments designed to induce lower electricity use at times of high wholesale market prices or when system reliability is jeopardized.[35]

However, this definition is very amorphous. As a consequence, it is not currently clear how retail electricity providers would satisfy a demand response carve-out. Thus, the Department should establish clear parameters as to what will qualify as a demand response resource so that suppliers can ensure that they have satisfied the associated carve-out compliance obligation without having to engage in any independent analysis that could result in a different interpretation than that of the Department. To this end, as it has done with other programs, RESA encourages the Department to establish a qualifications process that makes resource owners responsible for demonstrating that their resources satisfy the requirements of the Program.[36]

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[32] Questions, at 5; *see also* Chapter 227 of the Acts of 2018, § 13(c)(iii) (requiring "the establishment of a minimum percentage of clean peak certificates that must be derived from demand response resources.").

[33] Questions, at 5 (Question 34).

[34] *Id.* (Question 35).

[35] Chapter 227 of the Acts of 2018, § 8.

[36] *See, e.g.*, 225 C.M.R. 14.06 (establishing a qualification process for Class I RPS, SREC and SREC II resources).

Furthermore, in developing the methodology to establish the demand response carve-out, as with the overall Clean Peak Standard, the Department should provide as much quantity and cost certainty as possible. Accordingly, RESA requests that the Department establish a set standard that is known at least three (3) years in advance (and, preferably, for the life of the Program) and not use a formula as it has with other carve-out programs.

For instance, as the Department is aware, the Class I RPS has both an SREC and SREC II carve-out that are announced only months before the compliance year in which those obligations must be satisfied.[37] Each year, the Minimum Standard for the Solar Carve-Out is based on a formula with inputs that change annually and cannot be known in advance because suppliers do not have access to those inputs.[38] As a consequence, suppliers entering into contracts with customers prior to August 30 each year that extend through the next year and beyond[39] must build significant risk premiums into their prices. Moreover, recently, to account for an error, the Department adjusted the SREC II Minimum Standard during the compliance year[40] – after suppliers had already begun serving customers at fixed prices that were based on the previously announced compliance obligation. Although, in this instance, the obligation was reduced,[41] it could have easily been an error that increased the obligation. The possibility of this type of error further increases the risk associated with a formulaic Minimum Standard requirement; thereby,

[37] 225 C.M.R. 14.07(2)(a) ("This resulting percentage, or Solar Carve-out Minimum Standard, shall be announced by the Department not later than August 30th of the preceding Compliance Year."); 225 C.M.R. 14.07(3)(a) ("This resulting percentage, or Solar Carve-out II Minimum Standard, shall be announced by the Department not later than August 30th of the preceding Compliance Year.").

[38] *See*, *generally*, 225 C.M.R. 14.07(2), (3).

[39] *See* Energy Switch Massachusetts website (available at: http://www.energyswitchma.gov) (displaying numerous fixed price offers that extend 12-36 months into the future) (last visited Feb. 4, 2019).

[40] Correction to 2018 SREC II Minimum Standard and Preliminary 2019 Minimum Standards for SREC I and SREC II E-mail Correspondence from Michael Judge, Director, Renewable and Alternative Energy Division, Massachusetts Department of Energy Resources to Solar Carve-Out Stakeholder (Jul. 10, 2018) ("In the process of calculating the preliminary SREC II Minimum Standard for 2019, the Department of Energy Resources (DOER) discovered an error in the application of the SREC II Compliance Obligation formula that occurred in DOER's calculation of the 2018 SREC II Compliance Obligation and Minimum Standard.").

[41] *Id.*

further increasing the risk premiums built into customer contracts and unnecessarily increasing customer prices. In order to provide quantity certainty and remove the potential for calculation errors that result in retroactive changes to supplier obligations, RESA requests that the Department establish a set demand response carve-out standard that is known at least three (3) years in advance (and, preferably, for the life of the Program) and not use a formula as it has with other carve-out programs.

V. THE DEPARTMENT SHOULD PROTECT EXISTING RATEPAYER EXPECTATIONS

Another important design element of any new program is to ensure that it does not disrupt or otherwise harm existing stakeholder expectations. Thus, RESA encourages the Department to ensure that the Program is implemented prospectively only and in a competitively neutral fashion.

As the Department most certainly appreciates, the competitive electricity market in the Commonwealth continues to advance and suppliers continue to enter into contractual obligations, often with multi-year terms of service, while new regulations are being proposed and promulgated by the Department. However, suppliers do not take market positions or enter into agreement terms with customers based simply on the announcement that a regulatory change may occur or even based on the release of proposed regulatory revisions. Rather, since announced or even proposed regulatory revisions are subject to change based on legislative considerations as well as the regulatory input process, suppliers take market positions and enter into agreements based only on actual regulatory requirements officially promulgated by the governing regulatory authority. In this way, customers are not exposed to unnecessary price increases and/or pricing volatility as a result of speculative regulatory changes that may never be adopted or that may be significantly modified through the regulatory process before such

changes ultimately become effective. Accordingly, suppliers have entered into and continue to enter into agreements with customers that do not account for the Clean Peak Standard because suppliers do not know nor can they reasonably estimate their compliance obligations beyond 2019 or the cost of such obligations.

Only once the Department officially promulgates the regulations for the Program will suppliers modify their market positions and/or the terms of their agreements with customers to account for the Clean Peak Standard. Thus, RESA requests that the Department ensure that the Program is instituted on a prospective basis only.

Furthermore, because suppliers enter into multi-year agreements,[42] even if the Department institutes the Program prospectively, customers with fixed price arrangements could still be faced with unexpected price increases to account for the new obligation.[43] When a new obligation is imposed, it impacts existing contracts that were priced based on the prior obligation and may have a term of service that extends over multiple years. While suppliers may have contractual and legal means to address change of law circumstances, these mechanisms will have a direct and immediate financial impact to customers who have contracted for a fixed price and will now be subject to new and unanticipated charges that are not within their budgets. These unanticipated charges place customers in an untenable position as they may be required to retroactively pay these costs per the terms of their contractual agreements. Moreover, they undermine the customers underlying confidence that the competitive electricity market can provide and deliver the type of pricing products they desire and have contracted to meet their

[42] *See* Energy Switch Massachusetts website (available at: http://www.energyswitchma.gov) (displaying numerous fixed price offers that extend 12-36 months into the future) (last visited Feb. 4, 2019).

[43] *See, e.g.*, Chapter 227 of the Acts of 2018, § 13(a) (requiring that, for each year after 2019, "every retail electricity supplier in the commonwealth shall provide a minimum percentage of not less than an additional 0.25 per cent of sales by retail electricity suppliers in the commonwealth that shall be met with clean peak certificates, as determined by the department.").

energy needs. Accordingly, consistent with its prior practice,[44] RESA requests that the Department create a compliance exemption (subject to suppliers providing appropriate documentation) from the Program's compliance obligation until the expiration of any contracts existing as of the effective date of the regulations establishing the new Program. In this way, the Department can establish a paradigm that protects existing stakeholder expectations.

CONCLUSION

For all of the foregoing reasons, RESA urges the Department to ensure that the Program design avoids locking ratepayers into long-term commitments, provides for as much quantity and cost certainty as possible, and is developed prospectively and in a competitively neutral manner. RESA appreciates the opportunity to comment on this important matter and looks forward to the opportunity to provide further input as the Department continues to develop the Program.

Respectfully submitted,
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[44] *See, e.g.*, 225 C.M.R. 14.07(2)(a), (3)(a); *cf.* 225 C.M.R. 14.09(g) (setting the ACP Rate for that portion of a supplier's SREC obligations that were contractually committed or renewed prior to January 1, 2010 to the RPS Class I ACP Rate for the applicable compliance year).