



The Commonwealth of Massachusetts

**JOINT COMMITTEE ON TELECOMMUNICATION,  
UTILITIES, AND ENERGY**

STATE HOUSE

BOSTON 02133-1053

Michael J. Barrett  
Senate Chairman

Jeffrey N. Roy  
House Chairman

May 25, 2021

Mr. Patrick Woodcock - Commissioner  
Department of Energy Resources  
100 Cambridge St., Suite 1020  
Boston, MA 02114

**RE: PROPOSED PHASE 1 RULE CHANGES TO THE CLASS I AND CLASS II RPS**

Dear Commissioner Woodcock:

We hope this letter finds you and your staff well. Thank you for submitting the Department of Energy Resources' (DOER) Phase I proposed rule changes to the Class I and Class II Renewable Portfolio Standard to the Joint Committee on Telecommunications, Utilities, and Energy, and for the opportunity to review these proposed regulations and offer our comments. And thank you for your informative testimony at the hearing we held on May 12, 2021. We offer the comments below to ensure that the proposed changes continue to facilitate the success of the policies and programs that we've worked so hard to build.

## **SREC I Proposed Changes**

The DOER has implemented thoughtful solar incentive programs in order to grow the solar industry here in Massachusetts. We appreciate all of your hard work and dedication in crafting each solar program, starting with SREC-I, and moving on to the SREC-II and SMART successor programs. Each iteration of solar incentives is a testament to the success of previous programs, and to your motivation to uphold the Commonwealth's reputation as a leader in clean energy. To that end, we hope to highlight an aspect of the proposed phase I regulatory changes to the Renewable Portfolio Standard.

Currently, qualifying SREC-I projects can generate SRECs for sale outside of the auction process until the SREC-I program ends on December 31, 2023. At the hearing and in the written testimony, we heard a number of concerns that the regulatory changes proposed by DOER would limit participating projects to generating SRECs for 40 calendar quarters, or ten years. Many testified that this change would shorten the program for the earliest solar adopters, who relied on the DOER's SREC-I program price support and long-term regulatory certainty to create their business plans and secure financing. These first projects helped launch the Commonwealth's strong solar industry and are now facing a potential rule change that would take away previous program benefits. If SREC-I projects are ineligible for SRECs after 40 quarters, they will be eligible for Class I RECs instead. The cost of an SREC is about \$330 per REC, while the cost of a Class I REC is about \$40 per REC. This change could amount to an 88% reduction in revenue for a project owner.

Others expressed concern that retroactively reversing program guidance will create an unpredictable policy landscape, which may weaken developer and investor confidence in future renewable energy projects. We are extremely proud of the great work that Massachusetts has done to grow our clean energy resources and note that this policy reversal may jeopardize the success of future programs.

We understand that the DOER's motivation for pursuing this change is well intentioned, with the aim of securing about \$115 million in savings for ratepayers. This is indeed a noble effort, especially during the difficult economic times that many have endured throughout the COVID-19 pandemic. Investor-owned utilities, whose rates are regulated by the Department of Public Utilities (DPU), will pass those savings on to the ratepayers. This might not be the case with competitive suppliers, whose rates are not regulated by the DPU, and who are under no obligation to pass savings down to customers. Furthermore, competitive suppliers operate under long-term contracts with municipal aggregators or directly with households at the retail level. In both cases, the fixed-price long-term contracts typically keep customers locked into their rates while allowing competitive suppliers to profit from the SREC I project owners' lost revenue. It was also observed that there are no mechanisms within the proposed regulations to ensure that the savings reach the ratepayers they were intended for.

We strongly urge the DOER to consider the above issues and amend the proposed draft regulations to provide additional time for program participants to prepare for these changes, and to ensure that any cost savings that result from the changes benefit ratepayers.

## **Class I ACP Rate**

In these newly amended regulations, DOER proposes to cut the Class I ACP to \$60/MWh in 2021, \$50/MWh in 2022, and \$40/MWh in 2023. That is over 40% lower than DOER previously contemplated

in its own initial draft of the regulations issued in 2019. There was no indication in the 2019 Proposed Regulations that DOER was considering a phased decline approach to the ACP cap. DOER's rationale for proposing this phasedown is to align Massachusetts' ACP level with Connecticut's reduced ACP level of \$40/MWh. However, the Connecticut law that similarly required a phasedown provided two years and seven months of advance notice to stakeholders from passage (May 24th, 2018) to implementation (January 1st, 2021).

We likewise urge DOER to delay a phase down until January 2023. This would allow a two year and one month time period between the initial filing of the final draft regulations with TUE in December 2020 to implementation. We suggest the following timetable:

2023: Decrease from \$71.57 to \$60

2024: Decrease to \$50

2025: Decrease to \$40

In addition, we suggest that DOER implement a market review in 2024 at the end of the phasedown to determine if ACP levels are sufficient to incentivize RPS resources that don't have a long-term contract since contracted offshore wind is expected to come online this year.

### **Class II Waste-to-Energy Minimum Standard and ACP Rate**

We also heard testimony on DOER's proposal to temporarily increase the Class II Waste-to-Energy (WTE) minimum standard for 2021 to 2025 from 3.5% to 3.7% of retail electricity sales, at which point the standard will revert to 3.5%.

Class II WTE facilities began commercial operation prior to December 31, 1997 and generate Waste-to-Energy Certificates (WECs) for every megawatt-hour of electricity production. By statute, 50% of the revenues generated by WECs must be allocated to the Commonwealth's recycling programs. DOER's analysis shows that over the period of 2010 to 2019, WTE facilities have generated WECs in excess of the minimum standard for all but one year. This reduced demand to purchase WECs despite excess generation is attributed to declining retail electricity sales in the Commonwealth. DOER's proposal to increase the minimum standard to 3.7% aims to correct the market imbalance and thereby increase revenue to WTE facilities and DEP's recycling programs.

DOER has also proposed to increase the Class II WTE ACP level to \$35 per megawatt-hour from 2021 to 2025, reverting in 2026 to \$11.50 per megawatt-hour. Since WECs will likely trade near the ACP level, this increase will further contribute to increased revenue to WTE facilities and DEP's recycling programs.

We appreciate the department's attention to imbalances in the WECs market that absent program adjustments could have negative impacts on recycling and waste disposal for our cities and towns. Since 2010, Class II WTE revenues have provided 100% of the funds for DEP's recycling programs, resulting in \$41.6 million for these programs. Municipalities have increasingly been burdened with rising recycling processing costs, at least in part due to China's decision to stop importing plastic waste in January 2018. Further, approximately 120 municipalities in Massachusetts utilize WTE services, helping them to lower their waste disposal costs. Given that the increase to both the minimum standard and the ACP level are not

expected to finance new WTE facilities, result in additional WTE generation, or increase WTE emissions, we agree that this temporary increase should go forward. Increased revenues will allow WTE facilities to maintain their disposal capacity, thereby avoiding increased municipal disposal costs, as well as enable cities and towns to make necessary recycling infrastructure improvements.

We suggest that DOER conduct an assessment in year 3 (2023) to examine whether retail electricity sales have increased due to electrification of the transportation and building sectors. The DOER should report to the Committee by January 2023 if electric demand has materially increased and whether the DOER remains confident that the adjustment to Class II WTE remains justified. If DOER anticipates an increase in electrification, then the justification for an increase of the Class II WTE minimum standard to 3.7%, namely, declining retail electricity sales, will no longer exist. In that event, the minimum standard should be reduced. This review should follow the same public notice requirements required for any proposed changes, amendments, or deletions to regulations pursuant to Chapter 30A and Chapter 25A Section 12.

### **Imports -- Capacity Commitments and Netting Requirement**

We also appreciate the opportunity to review the elimination of language regarding enforcement of delivery and capacity commitment requirements of out-of-state Class I and Class II RECs.

We heard concerns that the proposed regulations violate both the Green Communities Act (GCA) and DEP Air Pollution Control Regulations. Testimony cautioned that the proposed elimination of associated RPS Rules opens the door to potential market abuses, including the double counting and greenwashing of RPS imports. The stakeholders fear that the changes could destabilize the Massachusetts RPS market; a flooded market would decrease the value of Massachusetts RECs, jeopardizing local projects and sending local dollars out of Massachusetts. "Massachusetts electricity customers would be subsidizing emissions reductions in other regions, without reaping the associated economic, health, and climate impacts," warned one stakeholder.

In 2008, the Department assessed the feasibility of implementing subsections (c) and (e) of section 105 of the GCA, as the Act required it to do. With respect to subsection (c), the study found that DOER could not track capacity commitments in the manner laid out by the statute. The Department then proposed alternative means "to achieve the intended purpose of subsection (c)..."

It is these alternative means that the new regulations propose to abandon, on the grounds that certain regulatory bodies outside Massachusetts state government ensure accurate capacity tracking. The Committee is concerned about this policy reversal and with DOER's proposal to rely solely on a non-state entity to ensure compliance with a Massachusetts statute. Past performance of an extra-governmental body is no guarantee of future enforcement of state law. We urge DOER to consider policies that more reliably meet the legislative intent of utilizing the RPS system to support meeting reliability requirements. This should include, at a minimum, exploring a self-attestation requirement that resources that participate in the MA RPS are also committed to providing their capacity obligations of the ISO-NE.

With respect to subsection (e) of section 105, in its October 2008 report DOER proposed "to adopt in regulation a more limited version of the netting restriction," one that would "require participants to self-attest that they will not engage in greenwashing ...." DOER agreed, moreover, that if it received credible

evidence suggesting "a reasonable possibility" that greenwashing may have occurred, it "would initiate an investigation."

Again, the Committee sees no reason to abandon self-attestation, a mild and common-sense step to boost compliance with a valid state law. Nor are we pleased to see DOER drop the possibility, however modest, of its investigating acts of greenwashing. Since the Department makes no representation that self-attestation and standby investigatory preparedness create regulatory burdens, it should maintain current practice.

Thank you for the opportunity to offer the above comments, and for the work of you and your staff during this critical time. We hope you will consider our recommendations and look forward to continuing to work with your office to build a strong policy landscape in which our clean energy programs can thrive and help us reach the ambitious goals we have set.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Barrett". The signature is fluid and cursive, with a long horizontal stroke at the end.

Sen. Michael Barrett

A handwritten signature in black ink, appearing to read "Jeffrey N. Roy". The signature is more stylized and angular than the one to its left, with several sharp turns and loops.

Rep. Jeffrey N. Roy

cc. Secretary Kathleen Theoharides