VIA EMAIL

August 1, 2019

Secretary Kathleen A. Theoharides
Executive Office of Energy & Environmental Affairs
100 Cambridge St., Suite 900
Boston, MA 02114
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Re: Proposed RPS Regulation Changes and Stakeholder Engagement

Dear Secretary Theoharides:

Over the past several months, the Department of Energy Resources (DOER), which is now under your purview, has led a deeply flawed rulemaking process for an even more deeply flawed proposal to rewrite regulations implementing the state's Renewable Portfolio Standard (RPS). Particularly problematic are changes pertaining to woody biomass, which appear to have been proposed solely at the urging of forestry and biomass industry interests; we are not aware of any clean energy organizations or climate scientists who advocated for these changes.

Accordingly, the undersigned organizations write seeking to help the Baker administration correct course and to ensure that the RPS assists the state in complying with the Commonwealth's climate mandates, rather than promoting technologies that will actually increase emissions. Flaws in the process to date are outlined below, followed by specific requests for a stakeholder process in light of the agency's newly proposed study.

These regulations are currently the linchpin of Massachusetts climate policy; numerous other policies of the Commonwealth incorporate RPS-eligibility in their implementation, including the Clean Peak Standard now under development. Changes to the RPS regulations must be grounded in environmental and climate science.

Background

As you are aware, following the Commonwealth's 2008 enactment of the Global Warming Solutions Act (GWSA), DOER undertook a four-year stakeholder process including the commissioning of the Manomet study to examine the net carbon impact of burning wood for energy. The Manomet study formed the foundation of a science-based rulemaking process. That process, which involved the multi-investigator Manomet team, many public meetings, and tens of thousands of hours of time by scientists, activists, and regular citizens, culminated in final regulations 2012. The Massachusetts biomass rules for the RPS became the first in the nation and the world to recognize that burning woody biomass for energy cannot be presumed to be carbon neutral.

In contrast, this April, DOER established a 43-day comment period[1] on its proposed sweeping changes to the biomass regulations and the RPS regulations as a whole, with three public comment hearings to take place during that period. Only significant public pressure convinced the agency to add a hearing in Springfield, where a biomass power plant proposal is currently pending, and to extend the written comment period to July 26th. Poor planning of the comment hearings resulted in two of the four being relocated and one rescheduled at the last minute. In the interim, DOER released its proposed "Guideline on Eligible Biomass Fuel for Renewable Generation Units" and "Guideline on Overall Efficiency and Greenhouse Gas Analysis", which are themselves an important component of the proposed regulations. DOER has stonewalled a request under the Public Records Law that seeks to shed light on the scientific basis for some of the proposed changes.

If the proposed changes become law, they will:

- Eliminate Massachusetts-specific forest harvesting criteria, including limits on intensive harvesting for biomass that are key to maintaining forest productivity and forest sequestration of CO_2;

- Adopt a greenhouse gas accounting approach that "qualifies" plants for subsidies by underestimating life-cycle CO_2 emissions, both by ignoring fossil fuels burned during harvesting, processing, and transport of biomass, and by utilizing the "single year" approach for estimating cumulative emissions, instead of the correct multi-year approach;

- Provide subsidies to polluting and inefficient wood-burning biomass power plants outside the state that are presently ineligible to receive Massachusetts RECs under the existing regulations; and

[1] DOER sent notice of a May 24, 2019 comment deadline on April 11, 2019 to an RPS stakeholder list, indicating that on April 5, 2019, the agency and filed amended draft regulations with the Secretary of State's office.

- Incentivize new carbon-emitting biomass plants to be constructed inside and outside the state.

It is our understanding that DOER is now commissioning a study of the effect of the proposed regulatory changes. However, despite ongoing attempts at dialogue from several of the undersigned organizations, we have not been allowed to see the proposed scope of this study.

Since the Manomet Study was published, the climate crisis has only gotten worse. There have been no studies that have called into question the Manomet approach, and indeed, a number of studies have been published that suggest the Manomet Study probably *under*-estimated the real greenhouse gas impacts of burning wood for energy.

DOER thus cannot provide any scientific rationale to justify the broad rollback of protections it proposes, nor any policy justification. As comments submitted by the Office of the Attorney General note:

> As the Supreme Judicial Court recently emphasized, Massachusetts climate policy "is designed to go well beyond business as usual in terms of reducing emissions: to upend, rather than to uphold, the status quo." Incentivizing additional forest biomass energy production would be a step backward, not forward, in this effort.[2]

Stakeholder Request

In light of the circumstances outlined above, we request:

- Commencement of a stakeholder process that includes environmental advocates and climate scientists to inform the scope and finalization of the proposed study; and
- The opportunity for undersigned organizations to make a science-based presentation to decision makers in the administration regarding biomass (as well as presentations concerning other problematic elements of the proposed changes to the RPS regulations).

At a minimum, DOER should abandon any proposed changes to the RPS regulations that could result in additional combustion of biomass until the Clean Energy and

[2] Office of Attorney General Maura Healey, "Comments on Amendments to Renewable Portfolio Standard Class I and II Regulations, 225 C.M.R. §§ 14.00 et seq., 15.00 et seq." July 26, 2019, at p. 10 (citing *New England Power Generators Ass'n, Inc.*, 480 Mass. at 406).

Climate Plan for 2030 is completed. Once that plan is released, any revisions to the regulations should only be undertaken following a stakeholder process that includes environmental advocates and climate scientists.

Sincerely,

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