

State of Connecticut
DEPARTMENT OF PUBLIC UTILITY CONTROL

Promulgation of Regulations for Licensing of)
Electric Suppliers and Administration of) Docket No. 03-10-19
Renewable Energy Portfolio Standards)

COMMENTS OF
UNION OF CONCERNED SCIENTISTS

March 18, 2004

Introduction

In light of the 2003 amendments to the Electric Restructuring Act brought about by the passage of Public Act 03-135, the Union of Concerned Scientists (UCS) offers the following set of written comments regarding the Connecticut Department of Public Utility Control's (the Department) proposed regulations in the above referenced docket.¹ UCS has contributed, in varying degrees, to the development of almost every state RPS in the country. UCS has participated extensively in the development of the NEPOOL Generation Information System (GIS) in its role as a member of NEPOOL, through participation on the working group and advisory committee that developed the GIS and its operating rules. In addition, UCS has participated in the development of policies and market rules throughout the region in support of an expanded role for renewable and environmentally preferable energy, including the Massachusetts RPS Advisory Group. We appreciate the opportunity to offer comments relating to the proposed changes to the Renewable Portfolio Standard (RPS). We appreciate the opportunity to offer the following comments.

The passage of Public Act 03-135 addressed in one form or another many of UCS's original comments in docket 02-04-14 submitted in January of 2003. UCS submitted a second set of comments in September of 2003 under the same docket. UCS appreciates the Department's progress toward promulgating regulations on the administration of Connecticut's renewable energy portfolio requirements. In particular, UCS strongly supports the Department's proposed regulatory language making the NEPOOL GIS the basis for verification for any RPS-eligible generation in New England. UCS also supports the inclusion of a mechanism for making up a compliance deficiency and a compliance schedule that is compatible with the reporting intervals of the GIS.

¹ See comments previously submitted in docket 02-04-14 for background on UCS.

However, many of the comments previously submitted to the Department under Docket 02-04-14 are still relevant and are presented here. Our additional comments, necessitated by the passage of Public Act 03-135 and the regulations proposed in Docket 03-10-19, are organized as follows:

- RPS Applicability
- RPS Eligibility
- RPS Geographic Eligibility
- RPS Targets
- Accounting and Verification
- Compliance
- Interaction of RPS with Markets for Tradable Emission Rights

Before delving into our detailed comments, we first wish to make an overall comment.

Make regulations a self-contained document. The draft RPS regulations contain no description of critical RPS design features such as eligible resources or percentage targets, instead relying solely on references to the applicable law. Making the regulations a self-contained document has the benefit of increasing the ease of use. Further, several aspects of the non-specific, high-level language in the Public Acts require further elaboration, refinement, clarification, or resolution (as we point out below). We believe it will be far easier to finalize and implement the regulations if the language to be elaborated upon is also present in the regulation.

RPS Applicability

The RPS requirement should apply to each electricity supply *product*. The RPS design should require compliance by all obligated retail electricity suppliers at the electric product level as a percentage of energy delivered. Such an approach ensures that suppliers supply the same level of renewable energy to all customer classes. The rationale for requiring that a portion of Connecticut's electricity be generated from renewable energy sources stems from the fact that the use of such energy sources benefits the state and society as a whole rather than merely certain utilities, customer classes or individual customers.

Accordingly, the responsibility for implementation and cost of the RPS should be spread fairly and evenly across all regions of the state and be shared by all retail market participants, including retail suppliers and all customer classes served by them. One key component of a fair and equitable distribution of responsibility is to require that the renewable targets apply to each electric supply product. Adoption of language that is

consistent with the RPS in Massachusetts will also enhance the compatibility of regional RPS programs.

RPS Eligibility

Definitions of eligible Class I and Class II resources as modified by the Act require further elaboration. For the regulations to function smoothly they must send clear signals, so generators and suppliers must have a clear understanding prior to the effective date of the RPS requirement of what resources are, and are not, eligible. In particular, we ask that the Department:

- Define clearly in the regulations what “low emission advanced renewable energy conversion technologies” means;
- Clarify what other biomass, besides gasification, would be eligible, or conversely, what if any conversion technologies would be ineligible. The definition of Class I biomass in the Act states that “a biomass facility, including, but not limited to a biomass gasification plant,” would be eligible. The Department should (for example), clarify whether generation of electricity from conversion of biomass to methane in anaerobic digesters is eligible;
- Define biomass “cultivated and harvested in a sustainable manner” especially as it pertains to non-forest biomass sources. UCS provided guidance on this topic in its first set of comments under Docket 02-04-14;
- Define clearly what will constitute “a run-of-the-river hydropower facility”;
- For hydropower, define clearly how the phrase “began operation after the effective date of this section” will be interpreted. In particular, this language is ambiguous with respect to refurbishments or repowering of dams out of operation for some period or that have temporarily ceased to operate. Without clarification, it is not clear whether eligibility would be limited to plants that *first* operated after the effective date, or whether a broader definition would apply, under which the repowering of dormant sites would be encouraged (e.g. any dam site that produced no energy for X years prior to the date of effective date of the Act, that later returns to operation, will be considered eligible);

These definitions could be established through separate regulatory dockets, such as Docket 04-02-07, in which the Department seeks to clarify the difference between Class I and Class II eligible hydropower facilities.

The Department should establish procedures for prequalification of sources as eligible under the revised Class I definition. The Department should look to RPS prequalification procedures established by the Massachusetts Division of Energy Resources as a useful model for providing certainty to potential investors in new renewable energy generators

before investment occurs. A separate regulatory docket establishing these procedures would also be an acceptable approach.

Clarify RPS exemption for suppliers using solely Class II renewables. The Statute provides for any supplier providing electric generation services solely from a Class II renewable energy sources to be exempt from compliance with the RPS. The Department should therefore incorporate language into its rules reflecting this exemption, and should make clear that the exemption only applies during calendar years in which Class II renewables constitute 100% of the supplier's delivered energy.

RPS Targets

The RPS requirement should be clearly stated as continuing in effect for a sufficient period to amortize investment in new renewable generation. While the Statute has refined the schedule of RPS targets, it does not specify if (or for how long) the RPS requirement will continue after January 1, 2010, the date when the last and highest specified Class I target must first be achieved. We recommend that the rules specify that the RPS obligation of 7% be allowed to self-sunset when renewable energy credit prices fall to zero, to allow renewable developers and retail suppliers to recover any incremental costs over a reasonable period of time, minimizing the price of renewable energy credits. This could be accomplished by inserting "and thereafter" immediately after the phrase "and by January 1, 2010" where the percentage targets are inserted in the RPS regulations. At a minimum, the RPS target should continue to apply for at least 10 years after the highest target is reached. This approach was adopted in both the Texas RPS rule and national RPS included in the Senate energy bill. Not following suit in Connecticut will undermine the investment in new renewable energy resources in the later years of the program because cost recovery would be uncertain.

Accounting and Verification

The section of the statute that allows suppliers and distribution companies to meet RPS requirements by purchasing Class I or Class II resources from outside New England is vague and poorly defined. It will be very important to ensure the smooth functioning of the market to address the issues raised by the language in the statute in Docket 04-01-13. Even with the initiation of this docket, the language in the draft regulations under 16-245a-1.(c)(1) is problematic in several ways.

First, the Department should clarify in its regulations that the GIS will be the preferred mechanism for tracking Class I or Class II energy that is imported to New England. The Operating Rules of the GIS contain a mechanism for creating GIS certificates for renewable energy that is delivered to New England and relying on this mechanism will reduce the risks associated with relying on other systems for compliance verification.

UCS also strongly urges the Department to modify the draft regulations to ensure the following:

- If renewable energy not delivered to NEPOOL qualifies, the attributes used by a Connecticut supplier for compliance are not used elsewhere.
- Renewable energy delivered to New England without attributes is not eligible for compliance with the Connecticut RPS.
- All possible alternative uses of renewable attributes (compliance with other RPS requirements, green electricity products, other claims of renewable characteristics) are documented to prevent double counting.

Compliance

The Statute's penalty for failure to meet the target should be more explicit in the regulations, with adjustment for inflation. While the Department has added language required by the Statute to reflect the 5.5¢/kWh payment for non-compliance, we recommend that the Department state clearly that the non-compliance payment is applicable to any and all compliance deficiencies. We also recommend that the Department add language be clarified to indicate that the alternative compliance payment will be adjusted annually for inflation, for two reasons. First, as inflation makes the effective cost cap lower and lower (in real terms), more suppliers and utilities will pay into the penalty fund rather than develop more renewable energy. The result is less renewable energy, less natural gas savings, and fewer economic and environmental benefits. Second, given the presence of a Massachusetts 5¢/kWh alternative compliance payment (ACP), an effective cap to the Massachusetts RPS, the legislature must have intended for the Connecticut price cap to be higher than that in Massachusetts. The logical result of a higher cap is that when supply is tight, Massachusetts retail suppliers would pay the ACP and renewable certificates would be sold to Connecticut suppliers. If the Connecticut 5.5¢ penalty is not inflation-indexed like the Massachusetts ACP, then it is unlikely that the Connecticut price cap will remain above the Massachusetts cap, conflicting with the apparent intent.

Interaction of RPS with Markets for Tradable Emission Rights

The Department's draft regulations and the Statute are silent on one issue that has become of greater relevance with the establishment of emission cap-and-trade regimes in the region. Some of the rules in New England states and elsewhere provide for set-aside allowances to be granted to renewable generators, a policy UCS wholeheartedly supports. A current example is the NO_x set-aside rules being developed by the Massachusetts Department of Environmental Protection (310 CMR 7.28). The increasing prevalence of such mechanisms raises the issue of whether generation remains eligible for an RPS *if* such allowances have been acquired and sold off. While this issue post-dates the creation of many RPS regulations (and therefore most such regulations remain silent on this issues), some states have considered these interactions and addressed them differently. For example, the Texas RPS requires that emission rights be bundled with the "renewable" attribute, so that generators cannot sell off rights to third parties and still have their associated production be eligible for RPS compliance. In contrast,

Massachusetts appears to have been purposefully silent on the issue, so that generation selling off such rights would continue to be eligible for their RPS.

Many of the programs and institutions supporting the nascent consumer “green power” market narrow eligibility to those generators that have not sold off such allowances. We include here as Attachment 1 a briefing paper prepared by UCS that addresses some of these issues.

In the future, particularly as similar programs are adopted for CO₂ trading regimes, the department should also consider the appropriate treatment of renewable generators participating in such market schemes. For example, if CO₂ emission offsets were sold to a CO₂ source such as a fossil fuel generating facility, then the disclosure reporting of gross CO₂ may be more appropriate to avoid double counting of CO₂ benefits.² We recommend that the Department consider this issue as it finalizes the renewable energy portfolio regulations.

² For our purposes, we use the term offset here to mean a project or activity that is designed to achieve net emissions reductions at a location other than a CO₂ source such as a fossil fuel generating facility.