

**State of Connecticut**  
**DEPARTMENT OF PUBLIC UTILITY CONTROL**

Notice of Intent to Adopt Regulations	)	
DPUC Promulgation of Regulations for	)	Docket No. 02-04-14
Renewable Energy Portfolio Requirements and	)	
Customer Disclosure	)	

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**COMMENTS OF**  
**UNION OF CONCERNED SCIENTISTS**

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**Introduction**

The Union of Concerned Scientists (UCS) offer the following written comments regarding the Department’s proposed regulations in the above referenced docket. First, we are pleased to see the Department tackling these topics and are supportive of the Department’s efforts. We appreciate the opportunity to offer comments relating to both the proposed changes to the Renewable Portfolio Standard (RPS) and the introduction of rules establishing Customer Disclosure, on the following topics:

**Renewable Portfolio Standard:**

- We support the Department’s reliance on the use of the NEPOOL Generation Information System (GIS) as the primary, if not sole, basis for demonstrating compliance. We do, however, offer some necessary additional detail and clarifications.
- We strongly recommend that the Department use the adoption of these rules as an opportunity to clarify a dispute between qualifying facility (QF) owners and those entities purchasing their energy over the title to renewable generation GIS certificates used for RPS compliance purposes.
- We support for Department’s intent to conform the treatment of imports from generation attributes from renewable generators located outside of NEPOOL to the GIS for determining eligibility of imports. However, we have some concerns with some of the specific details, particularly with respect to the proposed alternatives to reliance on the GIS.
- We urge the Department to adopt a definition for a “sustainable biomass facility” that is more specific as to the types of biomass fuel allowed and the forest management

practices used in the harvesting of forest-related resources, and offer specific recommendations for an the Department's consideration.

- It should come as no surprise to the Department that to date, the RPS has neither led to the development of any new renewables nor provided any additional revenues to existing renewables to support their continued operation in a competitive market environment. We point out that a major additional obstacle to the effectiveness of the RPS as a policy remains so long as the Standard Offer and Default Service suppliers are deemed exempt from the RPS mandate. We strongly encourage application of the RPS to all suppliers of retail load, and (in the event our recommendation is adopted) recommend a delay in the Class I target to allow sufficient lead time for development, and recommend the Department adopt contracting standards applicable to Standard Offer and Default Service suppliers in meeting these obligations. Some of these recommendations may require legislative as well as regulatory changes.
- Finally, we recommend that the Department adopt clear repercussions for non-compliance, as well as providing for a de facto cost cap, by implementing an alternative compliance payment mechanism and non-compliance penalty set at a value identical to that adopted by Massachusetts (\$50/MWh, in 2003 dollars, adjusted by inflation), similar to that adopted in Texas.

Disclosure Label: We also support the Department's requirement of a Consumer Disclosure Label and adoption of rules governing such disclosure.

- We support the Department's reliance on the use of the NEPOOL Generation Information System (GIS) as the sole basis for determining disclosure label fuel source and emission characteristics, but suggest some necessary additional detail and clarifications.
- We request that the Department clarify that the requirement to provide a disclosure label applies to *all* suppliers of retail load, including competitive electric suppliers as well as standard offer, default service or any other service provided by regulated utilities.
- In addition, adoption of these rules presents an opportunity to address a vital feature of emissions disclosure on which the proposed rules were silent: the treatment of carbon dioxide (CO<sub>2</sub>) emissions for generation sources using landfill methane and other biomass fuels.

Reporting: In addition, we offer suggestions for technical fixes regarding clarifying and simplifying reporting requirements, that will reduce the compliance burden and otherwise improve or clarify the proposed rules without compromising the DPUC's objectives.

Miscellaneous: Finally, we identify two minor corrections to the Department's proposed rules.

UCS is an independent nonprofit organization of over 60,000 citizens and scientists working for practical environmental solutions. For more than two decades, UCS has combined rigorous analysis with committed advocacy to reduce the environmental impacts and risks of energy. UCS' energy program focuses on encouraging the development of clean and renewable energy

resources, such as solar, wind, geothermal and biomass energy, and on improving energy efficiency. Participating in the design and implementation of state renewable policies is one way UCS actively works toward these ends. UCS is interested in promoting the public interest, which is served by a reliable and efficient regional electricity market broadly defined. UCS is submitting the following comments in this proceeding because it represents interests that will be directly affected by the outcome of this proceeding.

UCS has participated extensively in the development of the NEPOOL 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. UCS appreciates the opportunity to offer to the Department these comments. Recognizing the critical role that renewable energy generators play in improving the resource diversity and environmental sustainability of our regional electric grid, we submit these comments as part of our continuing efforts to

- establish, support and improve the various public policies affecting electricity resource portfolios at the state and federal level, including RPS and disclosure policies, and
- help bring about a regional consensus regarding the representation of emissions characteristics of biomass facilities on disclosure labels.

### **Renewable Portfolio Standard**

UCS has been a leading advocate for renewable energy portfolio standards (RPS) at the state and Federal level. We believe that a well-designed RPS can be one of the most effective policy mechanisms for increasing the role of renewable energy in electric markets. Our specific comments and recommendations are as follows:

1. The NEPOOL GIS should be the primary, if not sole, basis for demonstrating RPS compliance.

The GIS should be used for compliance with the RPS. The GIS was designed for this purpose with the significant input of the New England regulatory community (including the Department as represented through NECPUC), and will be used throughout the region for this purpose. It will provide obligated entities with a low cost means of demonstrating compliance while providing the Department with an easy, ironclad means for administration and compliance verification.

UCS believes strongly that the GIS, once established and all generators and load serving entities (LSEs) are registered, must ultimately be the only means of demonstrating compliance for all those generators and LSEs registered in the system. Reliance on any other method for verifying generation and load registered in the GIS will conflict with the GIS system, leading to double counting or double use of generation attributes, conflicting claims, etc.

The Department's proposed rules provide for electric suppliers to request alternative means for demonstrating compliance: in Section 16-245a-1(b)(2) allowing a request for Department recognition of a transaction structure not recognized by the GIS; and in Sections 16-245-5 (d), and 16-245a-1(c), allowing alternative demonstration if the necessary renewable energy source

tracking mechanisms do not exist at ISO-NE. We have several concerns with the broadness of both of these passages:

- (i) It is not clear that Section 16-245a-1(b)(2) would be limited only to treatment of imports, exports, and multi-fuel generating facilities. The Department should reword this section so as not to be construed more broadly. We comment further on treatment of imports below.
- (ii) Section 16-245a-1(b)(2)(C) is worded too broadly: “The renewable energy attributes are not claimed by a provider of retail electric generation services in any other jurisdiction” does not foreclose use by the electric supplier or another retail provider in the *same* jurisdiction.
- (iii) With respect to the Alternative Demonstration in Sections 16-245-5 (d), and 16-245a-1(c), UCS can envision the need for such alternative means for only a narrow set of generators: those generators, if any, eligible under the RPS but not registered under the GIS. These might include, for example, attributes associated with small customer sited generation not tracked by GIS. The regulations should specify that the Alternative Demonstration is limited only to such generation.
- (iv) In each case, the situation can be foreseen in which an electric supplier could enter into a transaction and then come later to the Department with a request for recognition of the transaction. The Department could assure a far more robust approach and greater market certainty if it were to require pre-approval of such a transaction structure, provide for advisory rulings with fixed turnaround time, and (in cases where broad precedent or controversial subject) require a hearing before issuing a ruling.

2. The Department should make a determination as soon as possible whether a buyer of QF generation has rights to the attributes represented by GIS certificates.

The advent and startup of the GIS has brought to light the potential for uncertainty with respect to legal rights to GIS certificates for a small but important subset of the generation in the region: those renewable qualifying facilities (QFs) with existing contracts predating the concept of attribute unbundling. This is a matter of great interest to both QF generators and contract holders, who, while taking different positions, share a common concern. Prompt resolution of this uncertainty is crucial to ensure market certainty necessary for obligated entities to meet their portfolio requirements and for those with legal title to certificates to capture their value (because GIS certificates have a limited “shelf-life”).

The Department should not be concerned with the initial allocation of certificates (under GIS Operating Rule 2.6) because initial distribution of certificates under those rules appropriately does not constitute ownership. Rather, the deciding factor is contractual rights. A GIS generator that is contractually obligated to transfer its certificates to another party is able to do so under the existing operating rules and capabilities of the GIS. Therefore, the resolution of this issue should focus on the resolution of contractual issues and need not entail any change to the GIS Operating Rules.

We believe it is under the purview of the Department, and in the best interest of all parties involved, to promote and ensure an orderly resolution of the issue. While the Department may or may not have the authority to alter PURPA contracts, we suggest that the Department, as the authority that set QF avoided cost rates as directed under PURPA, should examine whether it has

the jurisdiction and authority, the responsibility and the obligation to very promptly *clarify* the terms applicable to those rates. If the Department determines that it has such authority, the Department should *as soon as possible* make a determination whether a buyer of QF generation has rights to the attributes represented by GIS certificates, now that a distinct market has been established for generation attributes.

UCS' position in other venues has been that it may be appropriate to assign rights to renewable attributes to power purchasers under existing PURPA contracts to the extent that above-market QF contracts enable the QFs to continue to operate, and that the transfer of attributes to the power purchaser is used to reduce stranded cost recovery associated with the contracts. Here, the Department needs to assess whether:

- the purchases happened due to the *type* of power (i.e. because they are qualifying facilities),
- the rates paid are due to the *type* of power (i.e. because they are qualifying facilities),
- the rates paid to QFs are identical to “market” rates paid to commodity (non-renewable) generators,
- the long-term rates paid to QFs in Connecticut diverge from commodity market rates, and
- there are any rate-payer funded stranded costs associated with such contracts.

It would be reasonable to conclude that buyers under QF contracts are only purchasing commodity energy/capacity if they are paying market rates for the QF generation or buying under short-term spot pricing terms. Under other circumstances, it would be reasonable to conclude that by virtue of paying mandated avoided costs rates that exceed market rates, they were purchasing QF power and not commodity power. If the Department reaches this latter conclusion, then it must state that such long-term contracts confer rights to certificates to the buyer.

The Connecticut RPS clearly demonstrates a legislative intent to require a level of continued and increased renewable energy generation. If the Department were to determine that the required level of renewable generation could not economically be met without additional revenues to renewable generators beyond their existing contracts, the Department could allow QFs to retain ownership of their credits (see *The Renewables Portfolio Standard: A Practical Guide*, Nancy Rader and Scott Hempling, February 2001).

While the resolution of this issue is pending, the Department must ensure that GIS certificates are the only source of RPS compliance and disclosure information. Doing so will avoid the Department accepting more than one “claim” for the attributes of the same generation.

The Maine Public Utilities Commission opened a docket last summer on this very issue; for more information on this docket and its resolution, we refer the Department to Maine PUC Docket 2002-300.

3. The treatment of imports should rely exclusively on the NEPOOL GIS Operating Rules without allowing suppliers to seek open-ended approval of noncompliance transactions; however, the Department's rules should be explicit about what it considers eligible.

The Department should rely on the GIS Operating Rules to address the eligibility of attributes from generation not located within the NEPOOL control area. The GIS rules are designed to

support and implement the various “Attribute Laws” referred to in the GIS Operating rules, including RPS and disclosure.

The Department should decide what eligibility requirements would meet its legislative mandate and be clear about the nature of its requirements within its rules. If the Department’s reason for including Section 16-245a-1(b)(2) and Section 16-245a-1(c) derived from a desire to recognize transactions entered into for RPS compliance purposes that predated the establishment of the GIS rules (for grandfathering purposes), then the Department should narrow its language accordingly.<sup>1</sup> Alternatively, if the language in Section 16-245a-1(b)(2) reflects the Department’s desire to allow imports on a basis beyond that allowed under current NEPOOL GIS Operating Rules, then the Department should be explicit about its requirements, and NEPOOL will then have to consider amending the GIS system’s capabilities and operating rules accordingly.<sup>2</sup> At a minimum, the Department should add another condition to Section 16-245a-1(b)(2) that such a request shall demonstrate that it does not provide favorable treatment over generation located within New England.

As proposed, the Connecticut RPS regulations provide for the possibility of open-ended exceptions to the import rules, as allowed via Section 16-245a-1(b)(2) of these proposed rules, the Department introduces a level of uncertainty into the market that will undermine investment in new renewable generation. Specifically, the possibility of a favorable ruling for imported renewable energy that does not have to meet the delivery and documentation criteria under the GIS Operating Rules introduces risk of upsetting the supply-demand balance. If generators and their financiers don’t know who and where their competitors are, they cannot judge the market and the financial risk, and will either refuse to finance projects or treat such projects as having higher inherent risk. Both potential outcomes would needlessly raise electricity rates.

Another problem with the proposed import alternative is that it would allow an undefined “settlement period” over which imported energy deliveries and attributes would be matched. Under current GIS import rules, such settlement must effectively be *hourly*, meaning that energy imports must mirror the generator’s production. Generators within New England, on the other hand, are subject to *quarterly settlement*, meaning that generation at any time during a calendar quarter can be used to match with load at any time during that same quarter. The proposed Section 16-245a-1(b)(2) would seem to allow an annual or perhaps longer settlement. This lack of definition on settlement period for imported renewable energy is troubling, from several perspectives:

(a) fairness: should some electricity suppliers have a cost advantage over others?

(b) stability of the GIS system: if lower cost compliance alternatives are available working outside the bounds of the GIS, whether it is access to lower cost resources, or bypassing the

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<sup>1</sup> While we believe that the Department should consider the existence of any such contracts, we question whether the departure from the retail market of both Connecticut Energy Cooperative and Green Mountain Energy makes the need to address grandfathering moot.

<sup>2</sup> For example, if the Department believes that quarterly settlement for imports, or usage of certificates from generation in other (up-wind) control areas should be allowed in the presence of compatible generation information systems and/or renewable energy portfolio mandates.

constraints of quarterly settlement that apply to others in the market, it encourages bypass of the GIS that may undermine its use as the verification mechanism for regional Attribute Laws; and

(c) policy coordination: what would be the implications of imports under different transaction structures on the accounting for the disclosure label? If settlement over a period greater than a calendar quarter were to occur, then there may be more, or less, attributes than load during a particular quarter, confounding meaningful calculation of the percent mix for fuel source and emissions disclosure purposes.

4. The definition of a “sustainable biomass facility” eligible for meeting the Class 1 requirement should be more specific as to the types of biomass fuel and the forest management practices used in the harvesting of forest-related resources.

UCS recommends that the Department specify the types of biomass fuels that can be used at Class 1 sustainable biomass facilities. Specifically UCS recommends that sustainable biomass facilities are eligible for Class 1 compliance if they use the following biomass fuels:

- wood and wood waste biomass, including:
  - harvesting and mill residue;
  - precommercial forest thinnings;
  - slash;
  - brush; and
  - stumps;
- clean urban wood waste such as uncontaminated construction and demolition debris;
- landscape or right-of-way- tree trimmings;
- digester gas, dedicated energy crops;
- agricultural crops;
- crop byproducts;
- biofuels; or
- livestock residues.

We further urge the commission to explicitly exclude facilities directly combusting the following materials to generate electricity from eligibility as sustainable biomass facilities:

- standing commercial timber;
- incineration of municipal solid waste;
- recyclable post consumer waste paper;
- painted, treated, or pressurized wood;
- wood contaminated with plastic or metals; and
- tires.

With respect to wood and wood waste biomass, UCS strongly supports the sustainable management of forests and encourages forest practices that enable a forest to maintain its delicate ecological balance. Therefore, we propose that to ensure that the source of the biomass fuel is from a sustainably managed forest, the Department limit Class 1 eligibility to biomass facilities using wood or wood product harvested from forests certified by Forest Stewardship

Council (FSC).<sup>3</sup> Alternatively, the biomass facility must show that the original source of biomass fuel comes only from land that is harvested and managed so that it sequesters at least the same amount of carbon than the land in its preharvested condition.

We believe that the forest protection guidelines used to determine Class 1 eligibility should represent the best practices of all New England states. We believe that our proposed guidelines should be used as the common criteria for forest sustainability in the Connecticut RPS because the biomass energy serving the state's consumers could come from generators throughout the regional power pool, as well as adjoining areas such as Eastern Canada and New York. Furthermore, we believe that forest protection guidelines such as FSC certification are the most appropriate standards for sustainability.

5. The application of the RPS to only competitive electric suppliers must be altered if the RPS is to have any effect whatsoever.

Studies of RPS design and best practices have concluded that Connecticut's RPS is not effective.<sup>4</sup> With the benefit of hindsight as well as the benefit of observing RPS or similar purchase mandates developed in 13 states (as well as pending Federal legislation), we have concluded that Connecticut's RPS has perhaps the most glaring flaw of any such policy in the nation: the exemption of Standard Offer and Default Service providers. Connecticut is the only state in which such suppliers have been exempted from such a mandate: No other RPS exempts the majority of the market.

As a result, given the lack of development of a competitive market, the RPS has had virtually no impact whatsoever with regard to its objectives as the primary policy tool replacing oversight of utility resource planning in Connecticut's restructured electric market. It has neither led to the development of any new renewables nor provided any additional revenues to existing renewables to support their continued operation in a competitive market environment. In addition, the exemption negatively impacts the development of a competitive market. By creating asymmetric cost responsibilities between competitive suppliers and their competition, this exemption presents an addition barrier to entry for competitors, undermining the development of a competitive retail electricity market. Finally, even if a competitive retail market were to develop, exempting standard offer and default service supply also results in an unstable market for new renewable generation, as the amount of load on which the RPS applies could decrease dramatically from one year to the next.<sup>5</sup>

While we understand that the Department may have concluded that it is bound by legislative language (distinct from intent) from applying the RPS requirement to Standard Offer and Default Service providers, it is critical that the Department seek clarification from the legislature so that

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<sup>3</sup> See <http://www.fscoax.org/principal.htm> for more information.

<sup>4</sup> See, for example, Grace, R.C. and R. Wisner, "Crafting a Renewables Portfolio Standard for Rhode Island: Design Choices, Best Practices, and Recommendations", prepared for the Rhode Island Greenhouse Gas Action Energy Supply & Solid Waste Working Group's RPS Working Group, January 2002. [http://righg.raabassociates.org/Articles/Grace\\_1.24\\_redline.doc](http://righg.raabassociates.org/Articles/Grace_1.24_redline.doc)

<sup>5</sup> Ibid, pp. 20-21.

this major flaw may be fixed. Otherwise, the Department's efforts in this Docket are a wasted effort.

In the event that this flaw is corrected, it may be wise for the Department to:

- (a) seek a 2-year delay the percentage target ramp-up for Class 1 resources (such that the percentage requirement originally applicable in 2001 would take effect in 2003, and so on). Such a delay would recognize that the ineffectiveness of the RPS policy over the past two years has resulted in no orderly development of renewable resources, and that 1-2 years are required as sufficient lead-time for development to occur.
- (b) Develop contracting standards for Standard Offer and Default Service suppliers to support financing of new renewable projects.<sup>6</sup> Many renewable-fueled generation technologies have higher capital costs and lower operating costs than traditional generation resources. Because of this cost structure, many renewable technologies require long-term contractual commitments from credit-worthy buyers in order to attract financing. Investors appear to require commitments for renewable attributes, or both attributes and energy, of at least five years for landfill methane generators, and ten years or longer for more capital-intensive resource types such as wind. In recent testimony before the California Public Utilities Commission, UCS requested 15 to 20 year commitments for renewable energy purchases. UCS stated that renewable projects require long-term fixed price contracts in order to be cost-effectively financed. UCS suggested that twenty-year contracts will yield the lowest costs and minimize price risk to ratepayers.

Given renewable energy plants' relatively higher upfront capital costs and lower operating costs compared to fossil-fired plants, longer contract terms are a critical driver to reducing renewable energy's average electricity costs. As an example, for a generic wind power project with typical project assumptions, moving from a 20-year contract term to a 10-year contract term increases revenue requirements by 29 percent.<sup>7</sup> Given the substantial impact contract term has on renewable energy's all-in generation costs, policies that support longer contract terms will be a key instrument for effectively and economically meeting state renewable energy targets. As a result, UCS recommended that the CA Commission require contract

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<sup>6</sup> This proposed requirement addresses a potential market failure of lack of credit-worthy parties available to contract with new renewable generators sufficient for them to attract financing. Such a failure might be present so long as competitive suppliers represent a minute share of the market, and until a liquid wholesale market for renewable GIS certificates is established.

<sup>7</sup> This generic wind project assumes 76 wind turbines with 660kW capacity each for 50.2MW total capacity, 32 percent capacity factor, 8 percent debt interest rate, 60-40 debt-to-equity split, and 14 percent ROE. The 20-year contract scenario also assumes a 15-year debt term, which is common. In the 10-year contract scenario, debt term is shortened to 10 years, as lenders will not extend loans beyond the PPA term within a conventional project finance structure.

terms of at least 15 years, but preferably 20 years, for all new renewable energy projects.<sup>8,9</sup>

Short procurement cycles and RPS requirements increases the risk that ratepayers will pay more for RPS compliance than they should. Long-term contracting standards for regulated utility providers are emerging as a best practice among RPS policies in regulated environments (such as recently adopted RPS policies in California, New Mexico and Nevada) because they support access to commercial financing and lowest compliance costs borne by ratepayers. The same logic holds in a market in which competition has nominally been introduced, but has not taken hold.

Exclusive reliance on short-term procurement cycles precludes any long-term contracts for RPS-compliant certificates or renewable energy supply. Wholesale intermediaries or generation companies providing the distribution companies with supply will not secure long-term streams of certificates or renewable supply because they will not know from one procurement cycle to the next whether they will have the obligation to provide RPS-complaint certificates or renewable energy. Consequently, renewable generators do not have access to the bulk of the retail market because of administrative market design issues, despite their ability to provide the market commodities – electricity for retail consumption and RPS certificates.

Any such standards may be transitional, and as such should balance assuring generator access to financing, assuring that ratepayers bear the minimum cost of compliance, and minimizing interference with the emergence of a competitive retail market. Standards should address minimum contract duration and aggregate quantities associated with Standard Offer and Default Service appropriate in the prevailing market conditions.<sup>10</sup> To support such standards, the Department should require compliance filings for Standard Offer and Default Service suppliers, and should consider allowing full rate recovery for prudently incurred expenses meeting the above objectives if procurement is consistent with approved compliance plans.

#### 6. The Department should establish clear repercussions for non-compliance.

The Department's RPS rule does not include an explicit penalty mechanism for non-compliance. UCS believes it is important to include a penalty mechanism specifically for the RPS that is set at an appropriate level to ensure effective compliance with the standard. This would also ensure

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<sup>8</sup> Union of Concerned Scientists. 2002. Expert testimony of Warren Byrne to the California Public Utility Commission in their Order Instituting Rulemaking 01-10-024.

<sup>9</sup> See also appendix to the Scenarios for a Clean Energy Future has the \$/kW costs for new gas plants (table C-4-1) and wind and other renewable technologies (table C-4-7) [http://www.ornl.gov/ORNL/Energy\\_Eff/CEF-C4.pdf](http://www.ornl.gov/ORNL/Energy_Eff/CEF-C4.pdf)

Interlaboratory Working Group. 2000. Scenarios for a Clean Energy Future (Oak Ridge, TN; Oak Ridge National Laboratory and Berkeley, CA; Lawrence Berkeley National Laboratory), ORNL/CON-476 and LBNL-44029, November.

<sup>10</sup> Grace & Wisner 2002, pp. 50-51.

that renewable energy resources are actually developed and brought on-line, providing the important environmental and economic benefits intended by adopting the rule. We recommend that the Commission consider adopting a penalty mechanism that is similar to the Texas and Massachusetts RPS programs. Texas adopted a non-compliance penalty, set equal to \$50 per megawatt hour (MWh) (with an annual adjustment for inflation based on the GDP implicit price deflator) or 200 percent of the average market value of credits for that compliance period.<sup>11</sup>

The Massachusetts Department of Energy Resources adopted an alternative compliance mechanism to set an upper bound on the costs of RPS compliance and provide further flexibility for retail electricity suppliers in meeting the state's RPS requirements. Under the Massachusetts RPS, retail electricity suppliers can obtain credits by generating electricity from eligible renewable energy sources; trading or purchasing credits from another generator; or purchasing the required credits through an Alternative Compliance Payment (ACP) to a government designated entity.<sup>12</sup> The U.S. Senate passed a national RPS that also includes a similar alternative compliance mechanism. These systems allow retail electricity suppliers to still comply with the RPS requirement in the event that they do not develop new renewable energy sources on their own and credits are unavailable from eligible generators at prices below the ACP rate. In Massachusetts, the cost of the ACP is set at the same level as the penalty for non-compliance, \$50 per MWh (with an annual adjustment for inflation based on the GDP implicit price deflator), and the funds collected are to be used to maximize the commercial development of new renewable energy in the state. UCS recommends that the Department consider adopting an alternative compliance mechanism under this docket.

We believe it is appropriate to set the alternative compliance figure equal to that in place in Massachusetts. While Class I eligibility is not exactly the same as the Massachusetts new renewables RPS eligibility requirement, there is considerable overlap in eligible generation. Setting a different cost cap would likely lead to arbitrage between the states' requirements, potentially leading to compliance in one state and not the other. Setting the ACP values equal would avoid such arbitrage, allowing the market for renewable certificates to better function.

### **Disclosure Label Requirement**

1. UCS supports the Department's adoption of rules requiring a disclosure label for retail customers.

If retail competition is to ever take hold in Connecticut, disclosure labels are critical to enable customers to have access to the most basic information necessary to make informed choices among competing offer – information on prices and environmental characteristics of generation sources. Customers are not well informed about how their electricity is generated, and generally overestimate how much of their electricity comes from renewable sources and underestimate how much comes from polluting fossil fuel and nuclear sources.<sup>13</sup> The National Association of

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<sup>11</sup> For more information, see Public Utility Commission of Texas Substantive Rules, section 25.173(o)(2); and [www.state.ma.us/doer/rps/225cmr.pdf](http://www.state.ma.us/doer/rps/225cmr.pdf)

<sup>12</sup> For the detailed RPS regulations issued by the Massachusetts DOER, see [www.state.ma.us/doer/rps/225cmr.pdf](http://www.state.ma.us/doer/rps/225cmr.pdf)

<sup>13</sup> Kenneth Winneg, et. al., Baseline Survey: Consumer Knowledge, Practices, and Attitudes, Electric Utility Deregulation and Consumer Choice, Consumer Information Disclosure Project, Regulatory Assistance Project,

Regulatory Commissioners and others have recommended that electricity suppliers be required to label their products.<sup>14</sup> We therefore support the Department's establishment of disclosure requirements in this docket.

2. The NEPOOL GIS should be the primary, if not sole, basis for demonstrating the resource mix and emissions shown on the disclosure label.

The NEPOOL GIS was developed as the primary means of supporting meaningful disclosure in New England in the presence of a variety of Attribute Laws (RPS, disclosure and emission performance standards) adopted throughout the region. By relying on possession of certificates as the only source of rights to claim source-specific characteristics (such as fuel type and emissions), the GIS avoids the possibility of double-counting or double-use of generation attributes. It provides for credible verification and assures that this variety of regional requirements can coexist. Therefore, it is critical that the GIS be relied upon to fulfill these objectives in support of disclosure requirements. In this light, the Department should reword Section 16-245o-1(c)(1) of the proposed rules to directly reference the GIS, as it does in Section 16-245o-1 (c)(2).

3. The disclosure rules should specify *which* emissions are to be disclosed.

The proposed rules do not specify *which* emissions are to be disclosed. As the GIS is built to support all Attribute Laws in the region, and as other attribute laws may require additional or different information that may evolve over time, the proposed rule as drafted would create an undefined and open-ended obligation on electric suppliers. We recommend that the Department specify which emissions are to appear on the label, and recommend that, at a minimum, CO<sub>2</sub>, NO<sub>x</sub> and SO<sub>x</sub> be disclosed.

4. Disclosure requirements should apply to all retail electric service alternatives.

The Department must clarify the application of disclosure label requirements to *all* suppliers of retail load, including Standard Offer, Default Service or any other service now or in the future provided at retail via regulated utilities. For disclosure to have its desired effect spelled out in the Restructuring Act, to "allow customers to easily compare rates of air pollutant emissions and the resource mix of various energy sources of electric suppliers" the requirements must apply to *all* suppliers.

5. Disclosure rules should accurately reflect the greenhouse gas benefits of certain renewable energy sources.

Adoption of these rules presents an opportunity to address a vital feature of emissions disclosure that was referenced but left unresolved in the New England Conference of Public Utilities Commissioners (NECPUC) Model Disclosure Rule<sup>15</sup>: the treatment of CO<sub>2</sub> emissions from

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January 1998, online at [www.rapmaine.org/baseline.htm](http://www.rapmaine.org/baseline.htm). See also Erin Kelly/Gannett News Service, "Americans 'clueless' about environment: Survey finds that two of three people don't know causes of pollution," Detroit News, November 23, 1997. Available online at [www.detnews.com/1997/outlook/9711/25/11230014.htm](http://www.detnews.com/1997/outlook/9711/25/11230014.htm).

<sup>14</sup> For instance, see: Resolution in Support of Customer "Right-to-Know" and Product Labeling Standards for the Retail Marketing of Electricity, Passed by NARUC Executive Committee, November 1996.

<sup>15</sup> New England Conference of Public Utilities Commissioners, Inc. 1998. Model Rule on Information Disclosure. 3 March. Section II.D.3.(e)(iii) states: "The use of offsets associated with facilities that emit CO<sub>2</sub> shall be as determined by the Commission, in consultation with the State Air-Quality Agency."

landfill methane and other biomass facilities. UCS recently provided comments to the Maine Public Utility Commission on this topic, and we include those comments here under Attachment 1 for the Department's consideration.

## **Reporting**

### 1. The Department should clarify and simplify its reporting period requirements.

The Department's rule applicable to both RPS and disclosure contain unclear, overlapping, conflicting or redundant definitions of reporting periods. These should be simplified and clarified. For example:

- Section 16-245-3(c) of the Department's proposed rules references the "previous 12 months" and "next 12 months." These terms need to be clarified – it is unclear which period of twelve months is being referred to - perhaps by introducing "compliance year" as a defined term in Section 16-245-1, defined as either July 1 through June 30 (as implied in Section 16-245-3(c)) or as a calendar year, as discussed further below. This definition could then be consistent with the "previous year" definition in Section 16-245-5(b)(1). While there is no corresponding definition for "next 12 months" as used in this section, with these redefinitions, the previous and next *compliance* years would be obvious.
- In Section 16-245-5 (b) the Department should amend language referring to the July-to-June year to conform – to the above referenced definition of a "compliance year."
- The new Section 6-245a-1, Reporting Requirement, paragraph (a) requires an annual compliance demonstration for RPS based on NEPOOL GIS certificates, on a *calendar year* basis, by July 15 of each year for the previous calendar year. This calendar compliance year conflicts with the October 1 deadline for reporting renewable source content on a July-to-June year contained under the requirements for licensing. With this new section, Section 16-245-3(c)(4) and the entire 16-245-5(b) become unnecessary. Leaving them would create unnecessary burdens for electric suppliers, manifested as (i) excess compliance costs, (ii) unnecessary constraints for suppliers in terms of making sure percentages balance on *both* a calendar year and July-to-June year basis, and (iii) confusion resulting from redundant but conflicting reporting requirements.

The Department should simply choose whether compliance would be shown on a calendar or July-to-June basis. While the July-to-June basis is consistent with schedule established in the Restructuring Act for increases in the RPS percentage requirements, a calendar year compliance period is consistent with the issuance of NEPOOL GIS annual reports, with other states' RPS, and with the Department's proposed disclosure rules. We recommend that the Department therefore consolidate these reporting requirements into a single compliance demonstration requirement, and eliminate all extraneous language.

## **Miscellaneous**

- In Section 16-245-5(b)(1), the Department should replace the definition of "electric energy from a renewable energy source", instead referring to GIS certificates, and not the

energy from the renewable source, which can no longer be claimed as renewable once certificates are sold elsewhere.

- There is a stray, or incomplete, sentence at the end of this paragraph Section 16-245-5(b)(1).