



Union of Concerned Scientists  
Citizens and Scientists for Environmental Solutions

November 2, 2001

Robert Sydney, General Counsel  
Division of Energy Resources  
70 Franklin Street, Seventh Floor  
Boston, MA 02110

Re: Comments of Union of Concerned Scientists on the matter of Proposed Regulation for the Renewable Energy Portfolio Standard 225 CMR 14.00

Dear Mr. Sydney:

Thank you for the opportunity to submit the following comments to the Division of Energy Resources (DOER, the Division) on its proposed regulation for the Renewable Energy Portfolio Standard 225 CMR 14.00.

UCS is proud to have led an environmental and consumer coalition effort to include the Renewable Portfolio Standard in Massachusetts's electricity restructuring legislation in 1997. UCS commends DOER for its excellent job in analyzing the technical, legal, and regulatory issues during the advisory process associated with the development of these regulations.

UCS is very pleased that Massachusetts has finally released its proposed Renewable Portfolio Standard regulations so that our state can begin to reap the environmental and security benefits of increasing renewable energy use. We strongly support the majority of provisions as proposed in the regulations.

These regulations may well save consumers money by providing a hedge against the kinds of spikes in gas, oil, and electricity prices that we have seen over the last two years, while reducing harmful air pollution. In the very worst case, the regulations would increase electricity bills by less than 25 cents per month in 2003 and only one dollar a month by 2009.

UCS is especially pleased that the Administration stood firm in applying the regulations to all electricity products sold in the market, including standard offer and default service provided to most electricity customers. UCS thanks the Administration for not bending to appeals for exemptions that would have gutted the regulations.

Further, UCS commends the DOER for doing an excellent job in including and promoting mechanisms that provide for an appropriate level of flexibility in the program. These mechanisms include the reliance on a certificate system, the definition of the true-up period, and the banking and early compliance provisions.

UCS believes the proposed regulations include compliance mechanisms (such as the product-based compliance requirements) that are consistent with disclosure regulations and are intended to ensure the integrity of green marketing efforts that are separate from the RPS.

UCS would like to express its disappointment that the regulations will not explicitly ensure that we maintain the level of existing renewable generation. It is essential to ensure that new renewable energy plants are not simply replacing existing ones. To facilitate the speedy promulgation and implementation of the RPS regulations, the regulations should include language that commits the Division to monitoring existing renewable generation closely.

UCS also has concerns about the current draft language that defines eligible biomass resources. There are many pitfalls associated with a case-by-case approach to eligibility determinations. They could reduce market certainty, cause delays, and add to the administrative costs of the program for both the state and participants. The Division should consider another approach, such as developing a clearly defined standard for eligible biomass that promotes clean, efficient biomass until gasification technology becomes commercially and economically viable. For example, the DOER could establish a performance based emission standard that is benchmarked to the best performing (lowest emitting, most efficient) biomass facility in Massachusetts or New England. Facilities that meet or beat the benchmark could be considered eligible.

Alternatively, DOER could consider the merits of establishing a transitional period within which facilities using fluidized bed technology would be eligible until some benchmark indicating the commercial viability of gasification technology was achieved. This type of benchmark could be tied to a specific number of biomass gasification facilities or total megawatts in commercial operation in the region. Once the benchmark is achieved, transitional technologies would no longer be eligible.

Finally, in the matter of imports of renewable energy from outside of New England for RPS compliance, UCS asks DOER to consider carefully the possible unintended effects of the currently proposed language. UCS is confident that the Division will receive extensive, well-informed comments from experts regarding the highly complex issues that surround the importation of renewable energy for RPS compliance. DOER's regulatory approach must balance the need to encourage the development of clean, renewable energy resources here in Massachusetts and New England with the goal of promoting market for renewable energy that has integrity and is competitive, flexible, and efficient. The final RPS rule should neither unnecessarily hinder legitimate transactions from the broader regional market nor undermine the local benefits that Massachusetts and New England residents will receive from increasing renewable energy generation in our region.

As DOER is undoubtedly aware, there are numerous on-going processes that are likely to result in changes to rules governing physical and financial energy transactions between New England and adjoining control areas such as New York. Many stakeholders,

including UCS, are working hard to make sure that these changes are developed in a way that is rational and consistent with the characteristics of renewable energy generation. We are optimistic that such improvements will eventually be adopted.

UCS encourages DOER to monitor these developments closely and to craft final regulatory language that ensures that the regulations automatically track the protocols used by ISO-New England or eventually the Northeast Regional Transmission Organization. At a minimum, this approach would provide an efficient mechanism that keeps the RPS regulations in step with developments in the energy market that affect the generation and transmission of renewable energy.

We urge DOER to quickly finalize the RPS regulations to avoid any further detrimental effects on the renewable energy market. As the Department moves toward finalizing the regulations, UCS encourages it to develop a program that provides the greatest possible certainty for both renewable energy generators and electricity customers in the state and ensures the success of the RPS.

UCS is providing responses to DOER's questions in Attachment A. Thank you again for the opportunity to submit comments on this important program.

Sincerely,

Deborah Donovan  
Research Coordinator  
Clean Energy Program

Attachments

## **Attachment A**

### **Union of Concerned Scientists Responses to Questions**

#### ***Biomass eligibility***

The Division has proposed a “case-by-case” approach for determining the eligibility of biomass resources for those technologies not specifically included or excluded in the statute and regulations. This proposed approach introduces significant uncertainty into the RPS program and has the potential to be time consuming for market participants. UCS believes that the uncertainty introduced by such an approach will negatively affect the renewable energy market.

At a minimum, the Division should provide extensive clarification as soon as practicable regarding the process it plans to use and the criteria by which its determinations would be made either in the regulations or in guidance. It would be preferable for the DOER to make eligibility determinations in advance that are consistent with the statutory language. It will be important for DOER to develop a clear definition of “advanced.” Such a definition could be tied to one or more characteristics of the resource, such as the emission rate, efficiency, or fuel source. Alternatively, the Division should examine mechanisms for limited acceptance of fluidized bed facilities until gasification technology is economically viable. In addition, the Division should clarify what eligibility requirements apply to co-firing and digester gas.

#### ***Imports***

The current draft regulatory language requires a unit-specific transmission contract for imported renewable energy. It is important that such transactions meet Massachusetts’ requirements that the renewable energy from eligible units is physically delivered into New England and appropriately tracked. It is likely that the NEPOOL rules references in the draft regulation may become outdated in the wake of several potential changes to the New England ISO. UCS supports the addition of the following language:

*“or successor requirements that would allow an external, eligible renewable energy project to transmit renewable energy generation into the New England ISO on a firm, non-firm or as-available basis.”*

Such language would allow non-dispatchable technologies such as wind energy located outside the New England ISO to transmit energy into New England under terms that are appropriate given their generating characteristics.

Further, the addition of this language makes the RPS rule “self-updating,” making it unnecessary for DOER to initiate rulemaking proceedings in order to remain consistent with changes in the market structure and operation of the New England ISO.

### ***Compliance documentation***

UCS supports DOER’s commitment to developing guidelines for compliance reporting and suggests that the Division issue these as soon as possible. These guidelines will be essential to the development of the Generator Identification System (GIS) under development for the New England Power Pool (NEPOOL). A delay in DOER action on compliance documentation requirements could impact the cost and completion schedule of the GIS.

UCS suggests that DOER strictly limit the option of using contracts as a method of compliance determination to only those transactions involving energy not tracked by the GIS. The presence of the GIS is intended to capture the vast majority of electricity generation in New England. UCS is concerned that the use of a compliance mechanism other than the GIS would impose significant burdens on both the Division and market participants and could conceivably lead to double counting of renewable attributes use for compliance. Because either of these outcomes could undermine the integrity of the RPS, they should be avoided where ever possible.

### ***Renewable energy credit (REC)***

UCS supports DOER’s decision to rely on the GIS rather than creating a state-based REC system. The New England-wide certificate tracking system is valuable because it will keep administrative costs low and allow the New England energy and renewable energy markets to function smoothly. The other purposes of the GIS are to assist with the disclosure requirements and emission performance standards that exist in MA and in other New England states. The NE GIS could become the best practice for the Northeast RTO, thus providing even more benefits to New England consumers, energy suppliers, and generators. UCS greatly appreciates DOER’s support for the GIS.

### ***Product Compliance***

UCS strongly supports DOER’s decision to place compliance requirements on each retail electricity product. Such an approach has proven successful for other product labeling programs. The product-based compliance requirement will not impose any additional burden on suppliers because the renewable certificate market allows suppliers to flexibly meet their RPS requirement in several ways. This approach will also improve consumer confidence in the program.

***Early compliance***

Generally, having an early compliance mechanism is a good incentive. Unfortunately, the delay in promulgation of the RPS regulations may result in few market participants taking advantage of this incentive.

***Banked compliance***

UCS supports banking provisions that increase flexibility and reduce costs of the RPS program. We support the approach in the proposed regulations that sets limits on the amount and duration of banking. These are reasonable restrictions on banking.

***Alternative compliance***

While UCS believes the alternative compliance mechanism in the proposed regulations is reasonable in principle, there may be uncertainty about the Division's authority to implement such a mechanism under the RPS statute. We believe that the alternative compliance mechanism puts an upper bound on the costs of complying with the RPS. We urge DOER and the MTPC to use any funds accumulated through the alternative compliance mechanism in a way that increases the certainty of a long-term market for renewable energy. We recommend that the two organizations develop a guidance document that clearly states the approach the two organizations plan to use in expending the funds.