clf
conservation law foundation

For a thriving New England

CLF Massachusetts
62 Summer Street
Boston MA 02110
P: 617.350.0990
F: 617.350.4030
www.clf.org

December 23, 2020

The Honorable Michael Barrett
24 Beacon Street, Room 109-D
Boston, MA 02133

The Honorable Tom Golden
24 Beacon Street, Room 473B
Boston, MA 02133

Subject: House Bill 5169 - 225 CMR 14.00 and 225 CMR 15.00, Renewable Energy Portfolio Standard Regulations

Dear Chairman Barrett and Chairman Golden:

The undersigned groups write to urge you to hold a hearing and use the persuasive and advisory power at your disposal to bring the Department of Energy Resources ("DOER") to reconsider its approach to the amendments to 225 CMR 14.00 and 225 CMR 15.00 submitted to the Joint Committee on Telecommunications, Utilities, and Energy, docketed as H.5169 ("Regulatory Amendments"). Conservation Law Foundation ("CLF") and many of the undersigned submitted technical comments in July of 2019 detailing the numerous legal and scientific flaws in the proposed Regulatory Amendments at that time, and the final package filed with your Committee suffers the same flaws in addition to new deficiencies, as detailed below.

A. The Regulatory Amendments directly endanger an environmental justice community in the Commonwealth.

Opposition to the Regulatory Amendments arises not from a theoretical concern, but because these amendments serve to breathe new life into a facility that threatens to further poison a community already overburdened by poor air quality. The Regulatory Amendments most directly benefit the Palmer Renewable Energy, LLC biomass facility proposed for East Springfield, Massachusetts, the construction of which residents have protested for more than a decade. Springfield residents already have some of the worst air quality in the country, and adding to it would be both unconscionable and contrary to existing Massachusetts law and policy.

Massachusetts Executive Order No. 552, the Executive Order on Environmental Justice, recognizes that "all people have a right to be protected from environmental pollution and to live and enjoy clean and healthy environment regardless of race, income, national origin or English language proficiency." It further states that "[e]nvironmental justice populations are discrete and identifiable communities, mostly lower income and of color, that are at risk of being disparately and negatively impacted by environmental policies and overburdened by a higher density of known contaminated sites and by air and water pollution."

clf

conservation law foundation

Under the definition for "environmental Justice population" set out in the 2017 Environmental Justice Policy of the Executive Office of Energy and Environmental Affairs developed pursuant to E.O. 552, the vast majority of Springfield meets one or more of three criteria for environmental justice communities.[1] As of the 2010 Census, 110 of 121 census blocks in Springfield were identified as environmental justice populations based on race, income and English language proficiency, one of the highest rates in Massachusetts.[2]

DOER failed to consider impacts of the Regulatory Amendments on Springfield's environmental justice populations in violation of E.O. 552 and EEA EJ Policy. Residents of Springfield already struggle with the problems associated with significant and hazardous air pollution that degrades their air quality. Between 2015-2017, Hampden County experienced an above average number of high ozone days (4.5) and annual average concentrations of particle pollution (6.9 $\mu g/m^3$).[3] During the same time period the city of Springfield showed even higher averages for high ozone days (9.3) and annual average concentrations of particle pollution (12.4 $\mu g/m^3$).[4] Several factors contribute to Springfield's poor air quality including: multiple point sources of air pollutants (factories, power plants, and waste incinerators, including Covanta Springfield); the I-91 interstate running along the city and through neighborhoods; and the city's location in a valley where air pollution from other areas settles.[5] In fact, a recent Union of Concerned Scientists study showed Springfield to have transportation emissions more than 43 percent higher than the state average.[6] All these conditions have, unfortunately, led Springfield to be named the number one Asthma Capital by the Asthma and Allergy Foundation of America.[7]

Biomass plants can have serious localized pollution effects. For biomass to qualify for Massachusetts RECs, the RPS statute requires that the electricity is generated by a "low emission advanced biomass power conversion technologies."[8] However, when a facility is poorly sited, as is the case with the proposed Palmer plant in Springfield, incentivizing any level of additional particulate emissions is a dangerous policy choice and not credible in light of the statutory requirement for low emissions. The air permit for the proposed plant allows it to emit 34.55 tons of particulate matter and 13.2 tons of hazardous air pollutants annually, which includes heavy metals and carcinogens like formaldehyde and benzene.[9] In a community overburdened with

[1] The Environmental Justice Policy of the Executive Office of Energy and Environmental Affairs (January 31, 2017) https://www.mass.gov/files/documents/2017/11/29/2017-environmental-justice-policy_0.pdf.
[2] https://www.mass.gov/doc/ej2010communitystatisticspdf/download
[3] See Am. Lung Ass'n, State of the Air 2019, Massachusetts: Hampden (2019) (air quality report for Hampden County), https://www.lung.org/our-initiatives/healthy-air/sota/city-rankings/states/massachusetts/hampden.html
[4] The 2012 National Ambient Air Quality Standard for annual PM2.5 set by EPA is 12 µg/m3.
[5] Pub. Health Inst. of W. Mass., Air Pollution, Climate and Health in Hampden County 1 (Feb. 1, 2019), https://www.publichealthwm.org/download_file/view/256/306.
[6] https://www.ucsusa.org/sites/default/files/attach/2019/06/Inequitable-Exposure-to-Vehicle-Pollution-MA.pdf
[7] Asthma & Allergy Found. of Am., Asthma Capitals 2019: The Most Challenging Places to Live with Asthma (2019), note 15, at 6, https://www.aafa.org/media/2426/aafa-2019-asthma-capitals-report.pdf.
[8] G.L. c. 25A, §§ 11F(b)(8), (c)(7), (d)(8) (2019).
[9] MassDEP Conditional Air Permit for PRE Proposed Biomass-Fired Power Plant at 1000 Page Boulevard in Springfield, MA 15 (June 30, 2011). Available at http://www.pfpi.net/wp-content/uploads/2019/05/Palmer-Renewable-Energy_Non-Major-Conditional-Plan-Approval_06_30_11-FINAL.pdf.

poor air quality, building even a "low emission" biomass plant would only exacerbate the problem, adding damaging fine particulates and hazardous air pollutants where they can least be afforded.

The COVID-19 pandemic has shown the catastrophic effects of prolonged exposure to air pollution, notably the very particulate matter accounted for in the Palmer air permit.[10] For Springfield, as with so many of the Commonwealth's environmental justice communities, the impacts of the pandemic have been devastating. As of December 17, 2020, Springfield had recorded 9,231 cases of COVID-19 and an average daily incidence rate of 88.7 per 100,000 residents.[11] Opening the door to further cumulative environmental burdens for this community flies in the face of sound public health and ignores the environmental justice policy.

Pursuant to EO 552 and the 2017 EJ Policy, the Committee should categorically disallow RECs for any facility that would aggravate critical environmental conditions in an environmental justice community. More specifically, our undersigned organizations look to the Committee to prevent the Amendments from specifically incentivizing the construction of a biomass facility in Springfield.

B. The Regulatory Amendments are a betrayal of the carefully crafted 2012 compromise Renewable Portfolio Standard legislation and inconsistent with the intent and terms of the statute.

The Renewable Portfolio Standard (RPS) legislation enacted in 2012 was the result of years of scientific investigation, stakeholder engagement, and compromise. In 2009, in response to concerns from citizens regarding the carbon impacts of energy sources incentivized under the RPS, the Commonwealth commissioned the Manomet study to examine the net carbon impact of burning wood for energy and announced its intention to use its results to inform state policy. Upon completion of the study in 2010, the Patrick Administration agreed to issue carbon accounting rules for biomass eligibility in exchange for activists' setting aside a propose ballot measure. Ultimately, in 2012, the RPS regulations became the first in the nation and the world to recognize that burning woody biomass for energy cannot be presumed to be carbon neutral. This monumental achievement involved many public meetings and tens of thousands of hours by the scientists, activists, and regular citizens who devoted time to ensure that the rules were founded in science.

Moreover, the legislature expressed its intent in the RPS statute, M.G.L. c. 25A, § 11F, to follow a science-based approach. The Regulatory Amendments, if finalized, would expressly permit the types of high polluting, inefficient power plants that the existing regulatory framework rejects as overly carbon intensive. Specifically, the Regulatory Amendments would

[10] Lisa Friedman, New Research Links Air Pollution to Higher Coronavirus Death Rates, New York Times (Apr. 7, 2020) https://www.nytimes.com/2020/04/07/climate/air-pollution-coronavirus-covid.html.
[11] https://www.mass.gov/doc/weekly-covid-19-public-health-report-december-17-2020/download

remove the overall efficiency requirement for certain generation units that utilize non-forest derived residues for fuel. This change directly contradicts the current regulations' recognition that burning woody biomass for energy cannot be presumed to be carbon neutral. It also lacks scientific basis and contradicts the conclusions of the Manomet report, which concluded with regard to non-forestry residues that "importantly, the carbon profile of this material is generally similar to logging residues." DOER itself proposes to account for carbon from non-forestry residues using the same carbon calculator as it uses for forestry residues.

The terms of the Regulatory Amendments may also be characterized as outright violations of the RPS statute. The Regulatory Amendments' proposed rollback of the overall efficiency requirement for certain feedstocks is inconsistent with statutory requirements that such fuels must be "low emission" to be classified as Class I renewable energy generating sources. The Regulatory Amendments further propose to remove the analysis of lifecycle emissions, defeating the purpose of the RPS regulations. The Committee should not allow the Regulatory Amendments to roll back the expressed intent of the Legislature and the 2012 regulations that involved rigorous scientific study.

C. The Regulatory Amendments are inconsistent with the Global Warming Solutions Act.

Massachusetts enacted the landmark Global Warming Solutions Act (GWSA) in 2008. Since that time, overwhelming scientific consensus has told us that we must do more. The GWSA's 80% emissions reduction goal falls short of what the latest Intergovernmental Panel on Climate Change (IPCC) report says is required by 2050—economy-wide carbon neutrality, where emissions are balanced by uptake.

In order to meet the current or a strengthened version of our GWSA requirements, every policy and regulatory decision made by a department under the Executive Office of Energy and Environmental Affairs ("EEA") must be aimed at achieving long-term greenhouse gas emission reductions. At the very least, DOER should hold any changes to the RPS that could result in additional combustion of biomass until the Clean Energy and Climate Plan for 2030 is completed. Development of any revisions to the RPS so resulting from the Clean Energy and Climate Plan for 2030 should only be undertaken following a stakeholder process that includes climate and environmental justice advocates.

The Regulatory Amendments, in stark contrast to the emissions reduction mandates of the GWSA, further incentivize the inefficient combustion of materials such as solid waste and biomass. In addition to the rollback of certain efficiency requirements, noted above, the Regulatory Amendments' proposed changes to the RPS Class II "waste-to-energy" provisions would adjust the RPS to prop up outdated incinerators that pollute Massachusetts communities, and particularly environmental justice communities. The Regulatory Amendments are premised on the incorrect assumption that there are no lower-emission alternatives for disposing of these materials. In fact, there are less impactful alternatives for disposing of such materials. For

example, zero waste policies such as source reduction, recycling, and composting of waste can significantly reduce net life-cycle greenhouse gas emissions compared to incineration. Any claim that the Regulatory Amendments represent a positive step for achieving the emissions reduction goals established by the GWSA are, therefore, unfounded. The continued incentivizing of incineration and combustion will only hinder Massachusetts' ability meet its emissions reduction goals.

D. The Regulatory Amendments contain critical procedural flaws.

In addition to the environmental justice policy procedural violations noted above, the Regulatory Amendments run afoul of numerous additional procedural requirements. The Regulatory Amendments' proposed changes to the Alternative Compliance Payment ("ACP") rates are procedurally deficient. These amendments were not included in the proposal that DOER released in April of 2019. Accordingly, interested persons did not receive notice or have an opportunity to comment on these proposed changes. Furthermore, as RENEW Northeast, Inc. ("RENEW") discusses in the letter it submitted to the Committee on December 18, 2020, the proposed changes will not achieve the Commonwealth's policy goals of increasing the availability of renewable energy and making such energy affordable. Instead, the proposed scheme would disincentivize the building of renewable energy in Massachusetts. For these reasons, we join RENEW in respectfully requesting that the Committee exercise its discretion to hold a public hearing on the Regulatory Amendments.

The Regulatory Amendments proposed in April of 2019 similarly did not provide notice of a significant amendment to the definition of "Forest Salvage." Interested parties had an opportunity to comment on the originally proposed changes, which would expand the term to include trees that are removed due to the presence of an "injurious agent." The final Regulatory Amendments add that trees harvested through a DCR approved cutting plan also constitute forest salvage. This latter change represents a significant expansion of the materials that can be used as fuel sources for Class I renewable generation units. Due to the potential ramifications of this change, it is important that stakeholders be afforded an opportunity to review and express their views, data, and arguments in regards to the proposed change.

Finally, when DOER released the final Regulatory Amendments on December 4, 2020, it also provided a "Renewable Energy Portfolio Standard Technical Analysis of Biomass" (the "Analysis"). The purpose of the Analysis was to evaluate the potential impacts of the Regulatory Amendments on "the future operations and development of biomass generation units in the region." This Analysis was not provided when the Regulatory Amendments were first proposed in April of 2019, and accordingly, impacted stakeholders were not provided with an opportunity to review or respond to the new findings and justifications offered in the Analysis. Moreover, several of the justifications and assumptions put forth in the Analysis appear to be incorrect or inadequately supported. For instance, the Analysis justifies the deregulation of generation units that utilize certain feedstocks by asserting that such change will reduce greenhouse gas

conservation law foundation

emissions. However, it fails to provide a plausible basis or reasoning for this significant claim. Importantly, DOER's conclusions about emissions "reductions" from burning biomass rely on a single-year analysis to determine net emissions, which is only valid if a facility operates for a single year, then shuts down. For facilities in continuous operation, DOER should employ a multiyear analysis. The multiyear analysis reveals that the actual cumulative emissions disqualify electric-only plants from meeting the required standard. However, DOER has not included this analysis in its reports, representing another failure of transparency.

* * *

Thank you for your attention to this matter. Please contact Johannes Epke, jepke@clf.org, with any questions.

Sincerely,

Caitlin Peale Sloan
Interim Director, CLF Massachusetts

Adele Franks
Steering Committee, Climate Action Now, Western Mass

Andra Rose
Massachusetts Leadership Team Member, Mothers Out Front

Andrea Nyamekye
Co-Executive Director, Neighbor to Neighbor

Claire Müller
Movement Building Director, Unitarian Universalist Mass Action

Cynthia Luppi
New England Director, Clean Water Action

Deb Pasternak
Chapter Director, Sierra Club Massachusetts

Eben Bein
New England Field Coordinator, Our Climate

Eugenia T. Gibbons
Boston Director of Climate Policy, Health Care Without Harm

conservation law foundation

Fran Ludwig
Chair, Boston Catholic Climate Movement

Gail Page
Chair, Green Sanctuary, Climate Justice Group of the Unitarian Universalist Church of Reading

Heidi Ricci
Director of Policy, Mass Audubon

Jacqueline Velez
Western Massachusetts Racial Justice Organizer, Massachusetts Jobs with Justice

James O. Michel
Co-Founder, Resist the Pipeline

Jeanne Krieger
Progressive Democrats of Massachusetts (PDM)

Karry Muzzey
Co-chair, Take Back the Grid

Kathryn R. Eiseman
President, Pipe Line Awareness Network for the Northeast

Ken McDonnell
Member Representative, 350 Central Mass

Kimberly French and Sandra Smiley
Leadership Team, Sustainable Middleborough

The Reverend Lauren J. Holm
Reverend, Greater Springfield Campaign Nonviolence

Rev. Dr. Margaret Bullitt-Jonas
Missioner for Creation Care, Social Justice Commission (Episcopal Diocese of Western Massachusetts)

Maria Belen Power
Associate Executive Director, GreenRoots

clf
conservation law foundation

Dr. Mark Pohlman
Chairman, Environmental Justice Team of First Church of Christ Longmeadow UCC

Mary S. Booth
Director, Partnership for Policy Integrity

Michele Marantz
Chair, Longmeadow Pipeline Awareness Group

Nancy Goodman
Vice President for Policy, Environmental League of Massachusetts

Ricki Pappo
Chair, Lexington Global Warming Action Coalition

Roger Luckmann
Leadership Team Representative, Elders Climate Action Massachusetts

Rosemary Wessel
Program Director, No Fracked Gas in Mass., Berkshire Environmental Action Team

Sarah Dooling
Executive Director, Massachusetts Climate Action Network

Steve Long
Director of Government Relations, The Nature Conservancy in Massachusetts

Sylvia Broude
Executive Director, Community Action Works

Verne McArthur
Springfield Climate Justice Coalition