

October 25, 2017

Chairman Michael Barrett
Chairman Thomas A. Golden, Jr
Joint Committee on Telecommunications, Utilities, and Energy
Statehouse, 24 Beacon Street
Boston MA, 02133

(Via email)

Dear Chairman Barrett and Chairman Golden,

The Department of Energy Resources (DOER) has submitted proposed regulations to the TUE committee that govern the types of heating and combined heat and power (CHP) technologies eligible to receive subsidies under the Massachusetts Alternative Portfolio Standard (APS).(225 CMR 16.00). **We urge the TUE committee to conduct a public hearing pursuant to MGL Ch. 25A Section 12 as soon as possible on the proposed regulations and make recommendations to DOER on changes to, or removal of, the provisions related to woody biomass.**

The Legislature intended to closely control the conditions under which wood-burning would qualify for APS credits. The 2014 APS law requires DOER, in consultation with other state agencies, to set minimum eligibility requirements for thermal generation units using biomass, biogas and liquid biofuel that are protective of public health, minimize damage to forests, reduce greenhouse gas emissions, and utilize best-in-class commercially feasible technologies. (MGL Ch. 25A Section 11F1/2).

The Partnership for Policy Integrity (PFPI), allied environmental and public health groups, and concerned Massachusetts citizens weighed in extensively during multiple public review processes with our concerns about the climate, public health, and forest ecology impacts of the proposed APS biomass regulations. In addition to engaging in discussions leading to the revised APS statute, PFPI and more than a dozen other state and local groups submitted joint comments on two rounds of draft regulations in 2016 and 2017 (attached), noting that the proposed regulations failed to meet the minimum requirements of the law. Yet each time DOER revised these draft regulations, they have been further weakened.

We believe the final proposed biomass regulations utterly fail to meet both the letter and the spirit of the law, and importantly, are inconsistent with climate protection goals set out in the State's Global Warming Solutions Act (GWSA). They also could disproportionately impact air quality and public health in low-income communities and communities of color, yet DOER has failed to conduct an adequate Environmental Justice review despite repeated requests from stakeholders and impacted communities. Further, DOER has made extensive and substantive last-minute changes to the proposed regulations that could significantly impact public health, forests, and our climate – changes that have not undergone public review.

While we are still reviewing the final regulations, it appears that very few of the shortcomings that we identified were addressed by DOER, and new language has been added to expand the biomass materials that can be burned, dramatically increase public subsidies, and change how the net CO2 emissions are calculated. The regulations are riddled with drafting errors and confusing language, but our initial review suggests that the proposed APS biomass regulations will:

- **Increase carbon and air pollution**, by expanding the types of biomass that qualify as “eligible” under the regulations to include green wood chips, which are a highly polluting and inefficient fuel. Another significant change just introduced appears to allow generators to use as little as 30% “eligible” biomass woody fuel, which not only undermines the greenhouse gas objectives, but also could open the door to units burning contaminated fuels like construction and demolition waste. In addition, the statute requires assessment of life-cycle emissions from bioenergy, but DOER *deleted* the section of the greenhouse gas calculator that estimates fossil fuel emissions from manufacturing wood pellets and liquid biofuels, both highly energy-intensive processes.
- 2) **Fail to protect public health**, by ignoring the statute’s requirement to use best-in-class emissions control technologies. The regulation includes various emissions standards for particulate matter including one for “sensitive groups” (schools, hospitals, nursing homes), disregarding the fact that children, the infirm, and elderly people can live anywhere. Additionally, as PFPI and others noted in our comments on the draft regulations, the testing standards in these proposed regulations are so weak that they will allow boilers to receive APS credits in MA that the U.S. EPA will not approve after 2020.
 - 3) **Lead to unsustainable use of forests as fuel in MA and beyond**. The state developed science-based biomass harvesting standards for the 2012 Renewable Portfolio Standard (RPS) with extensive input from the public and the Legislature. DOER has abandoned those standards for the APS, replacing them with empty verbiage and almost no consultation, even though the APS statute required a public process for developing the standards. The ecological impacts of removing and burning wood are the same regardless of whether the wood is used to produce heat or electricity.

In addition to the examples provided above, DOER has introduced a number of new changes in the regulations that will allow significantly increased public subsidies to go to these biomass burners, including allowing bioenergy combined heat and power facilities to “double-dip” from subsidies, collecting both RPS and APS payments for electricity, as well as APS payments for useful heat.

PFPI is internationally recognized for its expertise in biomass energy and was instrumental in the development of the MA RPS bioenergy regulations. Despite our on-going efforts to share our analysis and expertise with DOER and other state agencies throughout this process, that courtesy has not been reciprocated. PFPI met with DOER Commissioner Judith Judson and senior staff with DOER, DEP, and EEA on Monday, October 16 to discuss the proposed regulations. Although we expressed interest in the timing of the release of the regulations, at no time during this meeting did the agencies indicate that they had already submitted the final regulations to the TUE for review the preceding Friday, October 13. They could have used this meeting as an opportunity to walk us through the changes in the final regulations and explain the revised methodology including GHG lifecycle emissions calculations to our groups, but instead failed to even inform us that the regulations had already been filed.

Recommendations

We advise the TUE committee to very carefully review the proposed APS biomass regulations and hold a public hearing on this proposal. We believe these regulations could gut the fundamental public health protections and standards for biomass established previously and significantly undermine the goals of the state’s flagship climate legislation, the Global Warming Solutions Act (MGL Ch. 21N). The GWSA sets

a goal of reducing CO₂ emissions in Massachusetts by 80% by 2050, and requires DEP to set declining emissions limits for key sectors of the economy. Since the heating sector is the second largest source of CO₂ emissions in Massachusetts, and since this proposal would incentivize burning wood for heat, the prudent course of action would be for the Legislature to conduct a thorough review of this proposal and make recommendations to DOER on bringing it into alignment with previously established State policy and goals.

However, there is no reason to delay implementation of other elements of the APS thermal program because of the problems in this one area. We recommend that TUE advise DOER to move forward with implementing the portions of the regulation that provide APS credits for clean technologies, like solar and geothermal heating, while the Committee takes the time necessary to review concerns about the biomass provisions and develop recommendations.

We appreciate your attention to this important matter. The Legislature has led the nation on this issue in the past, and we look forward to working with you to continue to advance Massachusetts' progressive policies to protect the environment and public health. If you have any questions or would like to discuss this further, please contact Jay McCaffrey at (617) 388-7644 or email james.mccaffrey@pfi.net.

Sincerely,
Mary S. Booth, Ph.D.
Director
Partnership for Policy Integrity

cc:
Joint Committee on Telecommunications, Utilities, and Energy
Joint Committee on Public Health
House Committee on Global Warming and Climate Change
Senate Committee on Global Warming and Climate Change