



April 21, 2020

Representative Thomas A. Golden, House Chair
Representative Carolyn Dykema, House Vice Chair
Senator Michael J. Barrett, Senate Chair
Senator Marc R. Pacheco, Senate Vice Chair
Joint Committee on Telecommunications, Utilities, and Energy
Room 473B
State House
Boston, Massachusetts 02133

Re: DOER Proposed Clean Peak Standard Rules and Regulations

Dear Members of the Joint Committee on Telecommunications, Utilities, and Energy:

On March 20, 2020, the Department of Energy Resources (DOER) filed its report pursuant to G.L. c. 25A, § 12, and G.L. c. 30A, in which it submitted for the review of the Joint Committee on Telecommunications, Utilities, and Energy (Committee) its proposed 225 CMR 21, Clean Peak Standard Rules and Regulation (Clean Peak Standard). This filing has been docketed separately in the House as House Bill No. 4581 and in the Senate as Senate Bill No. 2880.

Calpine Corporation (Calpine) and Vistra Energy Corp. (Vistra) submit this written testimony regarding our concerns with the Clean Peak Standard for the Committee's consideration with respect to H.4581 and S.2880. Calpine and Vistra have consistently advocated for policies that support both environmental stewardship and fair competitive markets, and we oppose programs that have the potential to create market distortions.

In our original comments to DOER, Calpine and Vistra generally supported the Clean Peak Standard provided that the regulations developed by DOER ensured regulatory certainty by including clear long-term targets and a reasonable alternative for compliance. The changes made by DOER between the proposed regulation and the version submitted to the Committee for review are significant and will have a dramatic impact on the market. Therefore, it is critical that DOER provide stakeholders an opportunity to further comment on these changes before finalizing the regulation.

While we recognize that DOER has a statutory obligation to implement a Clean Peak Standard, we have significant concerns that the submitted regulatory language is inconsistent with the statute and includes changes to the proposed regulation that will only increase costs for consumers without clear environmental benefits. Given the potential financial impacts to customers, as well as the expected ability of the Commonwealth to achieve its greenhouse gas reduction targets due to decreased emissions related to COVID-19, we urge the Committee to recommend that DOER use the regulatory process to take further comment on the new provisions in order to consider these concerns and make changes to the final regulatory provisions that mitigate consumer impacts and provide needed market and business certainty.

Calpine serves load through its wholesale entity and through its retail subsidiary, Calpine Energy Solutions in Massachusetts. Calpine Energy Solutions serves as a licensed retail energy provider in every deregulated state in the U.S. This includes providing electricity to seventeen states, including

Massachusetts and several others in ISO-New England (ISO-NE), as well as Washington, D.C. Additionally, in Massachusetts, Calpine operates the Fore River Energy Center, a natural gas combined cycle plant (NGCC) with baseload capacity of 750 megawatts (MW) and is currently developing a 20-MW storage project at this site. Calpine also operates two other NGCC plants that serve ISO-NE's wholesale markets: the Granite Ridge Energy Center (745 MW) and the Westbrook Energy Center (552 MW). Collectively, Calpine supplies over 2,000 MW to the ISO-NE region.

Vistra, through its power generation and retail electricity subsidiaries, brings essential products and services to market in 20 states and the District of Columbia including six of the seven competitive markets in the U.S. as well as markets in Canada and Japan. Serving nearly 5 million residential, commercial, and industrial retail customers with electricity and natural gas, Vistra is the largest competitive residential electricity provider in the country and offers over 40 renewable energy plans. The company is also the largest competitive power generator in the U.S. with a capacity of approximately 39,000 MW powered by a diverse portfolio, including natural gas, nuclear, solar, and battery storage facilities. As a result of its acquisition of Dynegy, Inc. in 2018, Vistra now owns and operates over 3,000 MW of NGCC generation resources that participate in the ISO-NE competitive markets. In Massachusetts, the company's generation fleet consists of the following power plants: Bellingham (566 MW), Blackstone (544 MW), and Masspower (281 MW).

Massachusetts has the most complex clean and renewable energy programs of any state in the U.S. with eight different classes of renewable requirements—each with its own separate set of regulations and guidelines. These complex programs make annual compliance burdensome for retail electric suppliers and create administrative costs that are ultimately borne by consumers. Thus, in our initial comments on the proposed Clean Peak Standard filed on October 30, 2019, we urged DOER to ensure that the rule has:

- a reasonable alternative compliance payment (ACP) that provides retail suppliers certainty with respect to the value of the ACP, and
- clear long-term targets to provide the regulatory certainty needed for retail load customers.

However, the submitted Clean Peak Standard has new provisions that undermine these objectives. The changes increase the ACP and fail to provide clear long-term targets needed for business certainty by including language that would adjust the Clean Peak Standard Minimum Standard and ACP based on market dynamics. These changes have the potential to increase costs for consumers and significantly undermine business and market certainty.

Given these concerns and in light of the recent COVID-19 impacts, we recommend that the Committee direct DOER to request additional comments on the changes included in the submitted Clean Peak Standard related to the ACP price and on the automatic adjustment provisions for both the Clean Peak Minimum Standard and ACP based on the Market Supply¹ of clean peak credits. Additionally, we continue to recommend that the final regulations include language that exempts existing retail contracts and adjust the effective date to January 1, 2021.

Alternative Compliance Payment

The ACP serves as an important price ceiling that provides business certainty and mitigates customer impacts. In the proposed Clean Peak Standard, DOER included an ACP of \$30; however, in the Clean Peak Standard submitted to the Committee, DOER has increased the ACP to \$45. This \$15 increase will increase potential costs for consumers. Until new clean peak resources come online in response to the

¹ The submitted Clean Peak Standard includes a new term, "Market Supply," defined as "the percentage resulting from dividing the number of Clean Peak Energy Certificates produced in a compliance year by the total market obligation of Retail Electricity Suppliers for said compliance year."

Clean Peak Standard and a robust Clean Peak market develops, the ACP will serve as the price constraint on credits for what is expected to be a constrained supply market. Additionally, in light of the current COVID-19 dynamics for business and customers including concerns regarding the ability for new projects to come online due to supply and labor constraints, the proposed approach of \$30 is a more reasonable starting point for the final rule.

Automatic Adjustments Due to Market Supply

The proposed Clean Peak Standard provided regulatory certainty in that both the Minimum Standard and ACP were set through the end of the program. While the proposed regulation authorized DOER to revise the standards every five years, any adjustments would only occur following a notice and comment regulatory process. In comments to DOER, Calpine and Vistra urged DOER to provide sufficient notice to stakeholders to submit comments on any modifications and to ensure sufficient lead time for procurement of credits if the compliance obligations were altered.

Contrary to that objective, however, the submitted Clean Peak Standard includes language that would automatically adjust both the Clean Peak Standard Minimum Standard and ACP based on Market Supply. The new approach creates significant uncertainty for both contracting and risk management and can lead to higher costs for customers. Given that DOER has the authority to make any appropriate adjustments through the five-year update mechanism, we would recommend that the final regulation retain that mechanism and eliminate the provisions that would adjust the standard and ACP based on Market Supply.

Exemption for Existing Retail Contracts

As outlined in comments to DOER, it is essential that the final regulation exempt electricity supply contracts executed before the effective date of the regulation. In prior regulations for retail electric sellers, DOER has provided an exemption for existing retail electric service agreements that cap the price for their customer for a fixed term. This exemption recognizes that unlike a regulated utility that can amend its retail tariffs to recover increased compliance costs, a retail electric supplier is obligated under a fixed price contract to maintain that price for the duration of that contract period.

DOER's August 2019 Draft Regulatory Summary suggested that retail load served under contracts executed prior to January 1, 2019, would be exempted from any compliance obligation, but the submitted Clean Peak Standard does not include any grandfathering provisions. In our initial comments, we urged DOER to ensure the final regulation expressly exempted existing contracts from compliance with the Clean Peak Standard as of January 1, 2019. However, due to the delay in promulgating final regulations, we are now also recommending that DOER exempt existing contracts though the effective date of the final Clean Peak Standard. The latter—the effective date—is more appropriate given that retail electricity suppliers have entered into multi-year agreements while the Clean Peak Standard was pending and do not have the ability to adjust fixed prices to account for new or increased compliance obligations. It is also critical to protect existing customers' expectations under those contracts. Only until retail electricity suppliers have full knowledge of the value of Clean Peak Energy Certificates, based on the final rule and market development, can contracts reflect the impacts of new requirements.

Thus, we urge the Committee to recommend that DOER add an exemption through the effective date of the Clean Peak Standard to ensure an orderly transition from the current market structure and existing contracts to the new structure and contracts that can reflect the final Clean Peak Standard.

Effective Date of the Regulation

Finally, Calpine and Vistra also believe that it is essential that the Committee direct DOER to finalize the Clean Peak Standard in a manner that reflects the current COVID-19 dynamics. We are seeing constraints in developing new projects, but also expect the Commonwealth will see a decrease in greenhouse gas emissions in 2020. Thus, we recommend that DOER finalize an effective date of January

1, 2021. This shift would mitigate consumer impacts this year, coincide with the expiration of calendar year supply contracts, and reduce the number of existing retail supply agreements in need of the exemption discussed above.

Thank you for the opportunity to provide this written testimony regarding DOER's Clean Peak Standard. We look forward to continuing to provide feedback, and please do not hesitate to contact Steven Schleimer, at Steven.Schleimer@calpine.com or Sano Blocker, at sano.blocker@vistraenergy.com, if you have any questions or need any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "SS Schleimer".

Steven S. Schleimer
Senior Vice President, Government and Regulatory Affairs, Calpine Corporation

A handwritten signature in black ink, appearing to read "Sano Blocker".

Sano Blocker
Senior Vice President, Government Affairs, Vistra Energy Corp.