

February 20, 2008

The Honorable Michael Morrissey
Senate Chairman
Joint Committee on Telecommunications,
Utilities and Energy
State House, Room 413-D
Boston, MA 02133

The Honorable Brian Dempsey
House Chairman
Joint Committee on Telecommunications,
Utilities and Energy
State House, Room 473-B
Boston, MA 02133

The Honorable Steven Panagiotakos
Chairman
Senate Committee on Ways and Means
State House, Room 218
Boston, MA 02133

The Honorable Robert DeLeo
Chairman
House Committee on Ways and Means
State House, Room 243
Boston, MA 02133

The Honorable Bruce Tarr
State Senator
State House, Room 313-A
Boston, MA 02133

Representative Paul Loscocco
State Representative
State House, Room 254
Boston, MA 02133

Re: MA Climate Coalition Recommendations for Reconciling H.4373 and S.2468

Dear Gentlemen:

The Massachusetts Climate Coalition applauds you and your colleagues for your work in developing and advancing far-reaching and timely energy legislation in House 4373, *An Act Relative to Green Communities*, and Senate 2468, *An Act to Generate Renewable Energy and Efficiency Now*. Notably, both the House and Senate versions of this legislation are expected to (a) substantially expand Massachusetts' critically important energy efficiency programs through reforms in electric and gas procurement and building codes, and (b) promote renewable energy by strengthening the Massachusetts Renewable Portfolio Standard, creating a pilot program for long-term contracts, and adopting net metering reforms. This is very good news for mitigating energy costs, improving energy security and reliability, and reducing environmental impacts.

Because some key differences remain between the House and Senate bills, and because the reconciliation of the two bills may have significant environmental and economic consequences, we would like to offer our recommendations for integrating them. Among our recommendations, we wish to highlight three that have particular significance:

- **To avoid providing incentives for technologies that would *increase* greenhouse gas emissions, the committee should adopt reasonable emissions standards for alternative energy technologies in the Alternative Energy Portfolio Standard as set forth in §15 of the Senate bill.**
- **To maximize the benefits of energy efficiency and demand resources while lowering customer costs, it is important to preserve the program funding streams (including RGGI, Forward Capacity Market and NOx revenues) as set forth in §8 of the House bill.**

- **The Renewable Energy Trust Fund and Alternative Compliance Payments under the RPS provide much-needed (if limited) funding for renewable energy projects and must not be diverted for other purposes.**

These issues and several others are discussed in more detail below.

1. Reasonable emissions standards for alternative energy technologies should be preserved as set forth in §15 of the Senate bill (corresponding to House bill §20). Given that coal is the dirtiest of fossil fuels contributing to the global threat of climate change, that Massachusetts has no indigenous coal resources, and that there are abundant untapped clean renewable energy resources available locally, there are many reasons why it makes no sense to support increased local reliance on coal. It makes even less sense to *subsidize* new coal technologies that will move us *backward* on the path to reducing greenhouse gas emissions. Yet the Alternative Energy Portfolio Standard (AEPS) in §20 of the House Bill creates a grave risk that we would be doing just that because it would reward increased reliance on coal for electric generation without explicitly requiring capture and permanent storage of associated greenhouse gas emissions.

To avoid providing incentives for technologies that would increase greenhouse gas emissions, AEPS eligibility must be limited to those alternative energy technologies that have a net carbon dioxide (CO₂) emissions rate equal to or less than the emissions rate of a new natural gas combined-cycle power plant. In addition, given that carbon capture and permanent storage, or “sequestration,” currently is the subject of significant research and development, it is important that any AEPS include the ability to ratchet emissions standards over time to ensure that incentives are tailored to promote cleaner emerging technologies that are most successful in reducing greenhouse gas emissions. Accordingly, we recommend that you adopt the language of §15 of the Senate bill, including the following critical requirements:

(a) eligible coal gasification facilities must include “capture and permanent sequestration of carbon dioxide;”

(b) all eligible technologies must be consistent with greenhouse gas reduction goals and have “a net carbon dioxide emissions rate not to exceed the emissions rate of a new natural gas combined cycle power plant which shall include all emissions related to thermal delivery, combustion, gasification, fuel processing and sequestration, whether or not such activities occur at the alternative generating source or at another location;” and

(c) “at least once every 2 years the division shall review and update, if necessary, all standards for new alternative energy generating sources to require the best available emissions control technologies and all feasible efficiency improvements.”

2. Energy efficiency and demand resource program funding streams should be preserved as set forth in § 8 of the House bill (corresponding to Senate bill § 9). The House bill calls for substantially all proceeds from the Regional Greenhouse Gas Initiative (“RGGI”) auctions,

the Forward Capacity Market (“FCM”), and the NOx allowance trading program to be used for funding energy efficiency and demand resource programs. The Senate bill does not explicitly include these funding streams, which are important for maximizing the potential of the programs while minimizing consumer costs. Accordingly, we urge you to adopt the House language directing substantially all RGGI, FCM, and NOx revenues to be used for energy efficiency and demand resource programs.

3. Funding for renewable energy projects should be preserved. The Massachusetts Renewable Energy Trust Fund (RETF) and Alternative Compliance Payments (ACP) made pursuant to the Massachusetts RPS comprise important sources of public investment in new renewable energy technology and generation in the Commonwealth. These funds have provided critical support for renewable energy projects by paying for feasibility studies, securing long-term Renewable Energy Certificate (REC) and power purchase agreements, etc. While the RETF and ACP have not always been used to greatest effect, there is an opportunity here to ensure that renewable energy benefits are maximized. Although both versions of the bill in one way or another clearly embrace this objective and include provisions that would provide more direction in the use of renewable energy funds, there are several provisions that are of significant concern because they would divert these key resources to *non-renewable* energy projects, as discussed further below.
 - a. ACP money is intended to maximize renewable energy development in order to meet the escalating targets for new renewable energy set by the Massachusetts RPS. §97 of the Senate bill is problematic because it would require the Division of Energy Resources (DOER) to use ACP money for three alternative purposes: energy initiatives at state or community colleges (with no restriction to *renewable* energy), flywheel energy storage technology, and generating units using paper-derived fuels that do not qualify as biomass pursuant to the RPS. The House version of the bill does not include this provision, although House bill §28, subsection 16(f), is similarly problematic because it allows for discretionary use of up to 100% of all ACP funds for energy efficiency projects for cities and towns. *We encourage the Committee to preserve the use of ACP for maximizing renewable energy development by excluding Senate §97 from the conference bill and by ensuring that, if House §28 is adopted, the use of ACP funds would be limited to renewable energy projects in green communities.*
 - b. §§22, 23, 24, and 26 of the Senate version of the bill, as well as §28 of the House bill, call for RETF resources to be used for energy efficiency, combined heat and power, green buildings, and other objectives that, while worthy, are unrelated to renewable energy development. If these provisions are included in the committee bill, they should at least be modified to make clear that such uses are only acceptable if undertaken jointly with renewable energy projects. §26 of the Senate bill and §28 (subsection 16(f)) of the House bill, which would require RETF resources to be used for projects benefiting cities and towns, likewise should be modified so that such community support would be designated specifically for renewable energy projects.

4. A thoughtful balance is needed in making hydropower eligible under the RPS while maintaining environmental protections. (House bill §19; Senate bill § 15). The Massachusetts Climate Coalition has been extensively involved in defending against past efforts to add resources such as *existing* hydropower generation to the RPS in ways that would have jeopardized the integrity of the program. However, the Coalition supports the inclusion of hydropower in the RPS so long as the integrity of the RPS is preserved and an appropriate balance is struck between (i) promoting the ongoing operation and reasonable expansion of hydropower generation and (ii) protecting natural resources from impacts commonly associated with hydropower facilities. The House and Senate bills each include language that would make hydropower eligible for the first time under the RPS, but the bills differ in important respects. For example, the House bill allows only incremental new hydropower meeting certain criteria to qualify for Class I, whereas the Senate bill also allows brand new hydropower facilities to qualify, subject to more stringent environmental standards including a requirement to meet “low impact” standards established by DEP. In addition, the House bill includes old hydropower in Class II, whereas the Senate bill excludes it.

We recommend that the committee reconcile the House and Senate versions of the RPS language as follows:

- a. Allow only incremental new hydropower from existing facilities and new hydropower that does not entail any new impoundment or diversion of water (or pumped storage) to qualify for Class I of the RPS;
 - b. Retain the Senate bill’s language requiring that eligible hydropower meet “low impact standards as established by the department of environmental protection, in consultation with the division and the department of fish and game;”
 - c. Retain the House bill’s Class II eligibility for existing hydropower having a nameplate capacity of 5 MW or less and meeting the environmental criteria delineated in subsection (d) of House bill § 19; and
 - d. Retain the Senate bill’s higher levels for Class I eligibility (25 MW for new or incremental improvements, as compared to 5 MW in the House bill), *but only adopt this higher limit if the Senate’s “low impact” requirements are included.*
5. We support the inclusion of “marine or hydrokinetic energy” in Class I of the RPS, as set forth in the Senate bill at §15, subsection (c)(viii). These are reasonable additions to the RPS in light of advances in the development of offshore and hydrokinetic renewable energy technologies and the tremendous potential off the coast of New England.
 6. We recommend that the Committee adopt subsection (j) of Senate bill §15 addressing the use of renewable energy certificates to meet both state and federal RPS requirements. This provision will ensure that the Massachusetts RPS will have the most effect in the context of any new federal RPS, and that states with lower commitments to renewable energy than

Massachusetts do not get the “easy way out” in complying with a federal RPS because of the Commonwealth’s leading position.

7. We encourage you to adopt the language from Senate bill §15 giving DOER discretion to set the Class II RPS target. The proposed new RPS Class II that is included in both the House and Senate bills is intended to support existing renewable energy generation and keep it running. It is important that the Class II target and ACP levels be set with this objective in mind and with the understanding that Class II RECs are not intended to provide the higher level of financial support/incentive provided by Class I RECs directed at *new* infrastructure. Accordingly, we encourage the Committee to adopt S. 2468’s language giving DOER discretion to set the Class II target (i.e., “(e) Every retail supplier shall annually provide to end-use customers in the commonwealth generation attributes from Class II energy facilities in an amount approved by the division”). This is a more elegant and flexible mechanism for setting the Class II target than the comparable provision in H. 4373, which would set the Class II target based on the percentage of renewable energy relied upon in 1998.¹
8. Senate bill §18 strikes the right balance with respect to imports of clean renewable energy, and should be embraced in its entirety. (Corresponds to House bill §23). Given all of the environmental and economic benefits of clean renewable energy development, ideally all of the renewable energy needed to meet the RPS targets would be generated locally. However, with many local projects stalled by siting battles and other obstacles, clean energy imported from renewable energy facilities outside the region plays an important role in meeting the Commonwealth’s renewable energy goals (at lower cost than making alternative compliance payments). While it makes sense to prevent opportunities for “gaming” of the system in terms of importing power to earn RECs, the House version of the bill includes language that is extraordinarily and unduly restrictive in requiring (a) 5-year participation in the Forward Capacity Market; (b) bilateral sales contracts (thus excluding spot market sales); (c) a geographic restriction to “adjacent control areas” irrespective of whether the power from other areas could be delivered within ISO-NE; and (d) that the power generator itself initiate the import transaction, rather than anyone else who may have title or ownership to the power. These restrictions not only pose practical barriers to legitimate renewable energy imports but also raise serious questions regarding consistency with the Commerce Clause and NAFTA. The House language is also ambiguous, and thus could lead to time-consuming and resource-intensive regulatory uncertainty. The Senate bill cleans up these ambiguities as well as the overly restrictive provisions noted above, while retaining the basic protections at the heart of the House’s language. We therefore recommend that the renewable energy imports language in the Senate version of the bill (§§ 18, 103Q, 103R) be adopted in its entirety.

¹ Tying the Class II target to a fixed percentage as set forth in the House bill’s language is problematic because total load may grow or fall, thereby *increasing or decreasing* any percentage-based requirement for Class II generation when the anticipated output of this Class II/pre-1998 renewable energy generation is expected to remain essentially *constant* over time. It is far preferable to set a fixed target for annual megawatt hours of “old” renewable energy that must be provided to electric customers in the Commonwealth, and DOER should be given discretion to set this target at a level appropriate to keep old renewable energy generation running.

9. We recommend that you adopt the language in House bill §8 requiring an “adjudicatory proceeding” in connection with DPU review of efficiency plans. (Corresponds to Senate bill §11). The House bill preserves the current process whereby all interested parties may make their case directly to the Department of Public Utilities or resolve any differences before a filing is made with the Department. House bill §8, subsection 21 (4)(c)(1), specifically requires an “adjudicatory proceeding.” The Senate language, by contrast, would provide nothing more than the opportunity to make a statement, risking less accountable regulation by potentially allowing decision-making without factual basis or public rationale. We therefore recommend adoption of the House bill’s language regarding review of efficiency plans.
10. We urge you to adopt Senate bill §4 to launch the Home Energy Scoring Program now. (Corresponds to House bill § 77). The House bill would establish a commission to study the feasibility of a home energy scoring program; the Senate bill takes this a significant step further by calling for the Board of Registration of Home Inspectors to develop and implement a program for time-of-sale home energy scoring. This home energy scoring program will supply prospective homeowners with energy consumption information about a property before they make the investment, allowing them to make smarter and more energy-conscious decisions. It will also empower homeowners to take action to improve the energy efficiency of their new homes. It does not make sense to postpone this important program. We recommend that Senate bill §4 be adopted so that the program can be launched without delay.
11. Senate bill §45 should be adopted to ensure timely implementation of International Energy Conservation Code (“IECC”). (Corresponds to House bill § 37). Both the House and Senate bills call for regularized adoption of IECC updates, an important and commendable advancement. Requiring automatic updates to the building code to reflect IECC revisions will significantly streamline the code revision process and help ensure that building efficiency is improved. We recommend that you adopt the Senate’s version of the IECC provision in its entirety because it will ensure more timely code updates (i.e., within one year of any revision to the IECC, as opposed to the House bill’s call for revisions “at least once every 3 years”) and provides for enforcement of building energy consumption performance. We also encourage you to add the anti-backsliding language set forth in the House version of the IECC provision: i.e., “No amendments to the Massachusetts energy conservation code shall be adopted that increase energy consumption in buildings.”
12. The energy goals set forth in House Bill § 73 should be adopted. The House bill establishes a set of worthy clean energy goals for the Commonwealth. While these goals may seem superfluous because they are not hard mandates, they have real value in demonstrating and bolstering the Commonwealth’s commitment to clean energy – an important consideration for investors thinking about financing clean energy projects, for example. We therefore urge you to include these goals in the final conference bill by adopting House bill §73.

Thank you for this opportunity to submit comments regarding the pending energy legislation. We look forward to continuing to work with you.

Very truly yours,

Sue Reid

Director, MA Clean Energy & Climate Change Initiative, *Conservation Law Foundation*
sreid@clf.org; Tel: 617-850-1740

John Rogers

Northeast Clean Energy Project Manager, *Union of Concerned Scientists*
jrogers@ucsusa.org; Tel: 617-547-5552

Sam Krasnow

Policy Advocate, *Environment Northeast*
skrasnow@env-ne.org; Tel: 617-469-6375

Diana Connett

Energy Associate, *Environment Massachusetts*
Diana@EnvironmentMassachusetts.org; Tel: 617-747-4315

Katy Krottinger

Clean Energy Coordinator, *Clean Water Action*
kkrottinger@cleanwater.org; Tel: 617-338-8131, x211

Nancy Goodman

Vice President for Policy, *Environmental League of Massachusetts*
ngoodman@environmentalleague.org; Tel: 617-742-2553

Rob Garrity

Executive Director, *Massachusetts Climate Action Network*
rob.garrity@gmail.com; Tel: 617-516-0500