

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO.

COMMONWEALTH OF
MASSACHUSETTS,

Plaintiff,

v.

UTILITY EXPENSE REDUCTION, LLC,

Defendant.

COMPLAINT

I. INTRODUCTION

1. The Commonwealth of Massachusetts (the “Commonwealth”), by and through the Attorney General, Maura Healey, and the Inspector General, Glenn Cunha, brings this enforcement action pursuant to the Massachusetts Consumer Protection Act, M.G.L. c. 93A, § 1 *et seq.*; the Massachusetts False Claims Act (“MFCA”), M.G.L. c. 12, § 5A *et seq.*; and the Clean Air Act, M.G.L. c. 111, §§ 142A-142E, and M.G.L. c. 21N against Utility Expense Reduction, LLC (“UER”), a New York-based retail electricity supplier that sold electricity to Massachusetts customers from 2016 to 2019 (the “Defendant”).

2. This action arises from UER’s failure to provide to its Massachusetts customers the minimum amount of renewable and clean energy that state law required it to obtain in order to do business in the state, or, in lieu of providing that energy, pay money to Massachusetts programs designed to reduce the environmental impacts of fossil fuel, in violation of the Massachusetts Renewable Energy Portfolio Standard (“RPS”), M.G.L. c. 25A, § 11F, 225 CMR

14.00 *et seq.* and 225 CMR 15.00 *et seq.*; Alternative Renewable Energy Portfolio Standard (“APS”), M.G.L. c. 25A, § 11F 1/2, 225 CMR 16.00 *et seq.*; and Clean Energy Standard (“CES”), 310 CMR 7.75.

3. UER’s violations of the RPS, APS and CES undermine efforts by the Commonwealth to increase electricity production from more environmentally friendly sources such as wind, solar and biomass, efforts that the state began in the early 2000s. Under the RPS, APS and CES, a retail electricity supplier may either buy a minimum percentage of its energy from renewable or clean energy sources or make an Alternative Compliance Payment (ACP) to the Commonwealth. The state uses ACP funds to accelerate the clean energy sector and to support programs to mitigate the impacts of climate change in the Commonwealth. UER was in compliance with the RPS, APS and CES for its first two years of operation in Massachusetts.

4. Starting in 2018, however, UER became noncompliant with these state environmental programs. Although it marketed itself as a supplier of “green” and “renewable” energy on its website, in 2018 and 2019, UER knowingly failed to comply with the program requirements to provide the amount of renewable and clean energy to Massachusetts customers or to pay an ACP.

5. As a result of its failure to provide the required amount of renewable and clean energy to Massachusetts customers, or to pay an ACP to the Commonwealth, UER owes hundreds of thousands of dollars to the Commonwealth.

6. The Commonwealth, through DEP and DOER, notified UER multiple times about UER’s statutory payment obligations under program statutes and regulations. Despite receiving these notifications, UER left the Massachusetts electricity market in 2019 without meeting its

obligations. In correspondence with the state, UER acknowledged the notices of noncompliance from the state but failed to take any steps to pay the amounts it owed the Commonwealth.

7. In leaving the Massachusetts electricity marketplace without either buying from renewable or clean energy sources or making an ACP to the Commonwealth, UER obtained the financial benefits of doing business in the state without meeting its legal obligations, giving it an unfair advantage over similarly situated suppliers that did comply with program requirements. Furthermore, Massachusetts customers did not receive the bargained-for benefit of choosing to buy electricity from a retail supplier that presented itself as a supplier of electricity from “green” and “renewable” sources.

8. As a consequence of UER’s failure to make ACPs to the Commonwealth, UER gained a financial windfall and Massachusetts environmental programs lost hundreds of thousands of dollars in revenue. This lost revenue undermined the purpose of these programs and limited the environmental benefits to Massachusetts residents.

JURISDICTION AND VENUE

9. The Commonwealth brings this action pursuant to its authority under M.G.L. c. 12, § 5C, M.G.L. c. 12, §10, and M.G.L. c. 12, §11D.

10. This Court has jurisdiction over the persons and subject matter of this action pursuant to M.G.L. c. 223A, § 3.

11. Venue in Suffolk County Superior Court is proper pursuant to M.G.L. c. 12, § 5C, and M.G.L. c. 223, § 5.

II. THE PARTIES

12. The Commonwealth is represented by the Attorney General acting in conjunction with the Inspector General pursuant to M.G.L. c. 12A, § 11.

13. Defendant Utility Expense Reduction, LLC (UER) is a New York corporation with a principal place of business at 111 John Street, Suite 520, New York, New York. UER is a retail electricity supplier that did business in Massachusetts from 2016 to 2019. UER held a license from the Massachusetts Department of Public Utilities to provide electricity to Massachusetts customers during the relevant time period.

III. FACTS

A. THE MASSACHUSETTS ELECTRICITY MARKET

14. The Commonwealth is part of the New England power grid, which connects all six New England states over an electric power system spanning thousands of miles. Generating sources produce and transmit electricity over this grid, which electricity companies then deliver to homes and businesses through power lines.

15. ISO New England (ISO-NE) is an independent, not-for-profit company authorized by the Federal Energy Regulatory Commission (FERC) to coordinate and direct the flow of electricity over the New England grid.

16. New England Power Pool (NEPOOL) is a FERC-regulated voluntary association of over 500 electricity market participants in the six New England states.

17. ISO-NE coordinates with NEPOOL on electrical transmission planning and dispatch throughout New England.

18. NEPOOL's Generation Information System (NEPOOL GIS) tracks all megawatts (MWh) of electricity that generating facilities feed onto the New England grid.

19. NEPOOL GIS creates a serial-numbered, electronic certificate for every MWh of electricity on the New England grid. NEPOOL classifies the certificates according to the energy source.

20. NEPOOL GIS's serial-numbered, electronic certificates for electricity generated from renewable energy sources are known as Renewable Energy Certificates (RECs).

21. NEPOOL GIS's serial-numbered, electronic certificates for electricity generated from alternative renewable energy sources are known as Alternative Energy Certificates (AECs).

22. NEPOOL GIS's serial-numbered, electronic certificates for electricity generated from clean energy sources are known as Clean Energy Certificates (CECs).

23. Non-electricity generating companies that sell electricity to Massachusetts customers buy serial-numbered, electronic certificates from NEPOOL for each MWh they sell to Massachusetts customers.

B. THE MASSACHUSETTS RETAIL ELECTRICITY SUPPLIER PROGRAMS AT ISSUE

24. Pursuant to its enabling authority at M.G.L. c. 25A, § 6, the Massachusetts Department of Energy Resources (DOER) develops and implements policies and programs aimed at ensuring the adequacy, security, diversity, and cost-effectiveness of the Commonwealth's energy supply.

25. Pursuant to its enabling authority at M.G.L. c. 21A, § 2, the Massachusetts Department of Environmental Protection (DEP) develops, implements and enforces policies and programs aimed at protecting the environment through preventing pollution of air, water, and land; wetlands protection; hazardous materials regulation and climate change reduction efforts.

26. DOER operates several programs for the retail electricity market in Massachusetts, two of which are: the Renewable Energy Portfolio Standard (RPS) (Class I and

Class II) and the Alternative Renewable Energy Portfolio Standard (APS) pursuant to M.G.L. c. 25A, §§ 11F and 11F 1/2; and 225 CMR 14.00 *et seq.*, 225 CMR 15.00 *et seq.* and 225 CMR 16.00 *et seq.* DEP implements the Clean Energy Standard (CES) for the retail electricity market pursuant to M.G.L. c. 111, §§ 142A-142E, M.G.L. c. 21N, and 310 CMR 7.75 *et seq.* These programs require Retail Electricity Suppliers (RES) selling electricity to End-use Customers in the state to buy a certain percentage of their energy from renewable, alternative or clean energy sources each year or, in the alternative, make an alternative compliance payment (“ACP”) to the Commonwealth that the state will use to invest in and promote green energy in the state.

27. A “Retail Electricity Supplier” is a “person or entity that sells electrical energy to End-use Customers in Massachusetts.” 225 CMR 14.02, 15.02, 16.02. UER is a RES.

28. An “End-use Customer” is a “person or entity in Massachusetts that purchases electrical energy at retail from a Retail Electricity Supplier” 225 CMR 14.02, 15.02, 16.02; 310 CMR 7.75. UER is a RES that sells electricity to End-use Customers.

Renewable Energy Portfolio Standard Class I

29. In 1997, the Electric Industry Restructuring Act (EIRA) became law in Massachusetts. The main purpose of the EIRA was to use competitive market forces to reduce prices and provide Massachusetts customers with choices for their electricity supplier. The EIRA broke up then-existing utility monopolies into separate generation, distribution and transmission entities, allowing electricity generators that are not public utilities to access the retail end-user market for the first time.

30. The EIRA required DOER to establish and oversee a Renewable Energy Portfolio Standard (RPS) from 2003 through 2009. In 2008, the Green Communities Act (GCA) extended the RPS past 2009 and reclassified renewable energy sources defined in the original RPS as

“RPS Class I” renewable energy sources. The purpose of the GCA was to provide renewable and alternative energy and energy efficiency in the Commonwealth.

31. A RES selling electricity to End-use Customers in Massachusetts must buy a minimum percentage of its energy from renewable energy sources each year. A RES demonstrates its purchase of renewable energy through ownership of the accompanying RECs from NEPOOL. 225 CMR 14.07(1).

32. A RES may bank RECs for compliance in either or both of the two subsequent years after it obtains them, provided that the RES is in compliance with 225 CMR 14.00 for all previous years. 225 CMR 14.08(2).

33. If a RES does not buy at least the minimum required amount of RPS Class I RECs by the compliance deadline and does not have sufficient banked RECs to meet the minimum requirement, the RES must comply with the regulatory mandate by making an Alternative Compliance Payment (ACP) to the Commonwealth through the Massachusetts Clean Energy Center (MassCEC), a quasi-public agency whose mission includes accelerating the growth of the clean energy sector. M.G.L. c. 25A, § 11F(a-c); 225 CMR 14.08(3).

34. An “Alternative Compliance Payment” is “a payment of a certain dollar amount per MWh” that a RES can pay to receive alternative compliance credits to comply with its regulatory mandate instead of buying the minimum required amount of RECs. 225 CMR 14.02.

35. DOER calculates the ACP a RES owes for the RPS Class I by multiplying the amount of RPS Class I renewable energy a RES must buy for the year (in MWh) by the dollar rate per MWh that DOER set for that year. 225 CMR 14.08(3).

36. DOER publishes the minimum percentage of RPS Class I renewable energy a RES must buy each year. 225 CMR 14.07(1).

37. A RES meets the RPS Class I requirement by buying RPS Class I RECs from NEPOOL and documenting its REC purchases in an annual Compliance Filing to DOER. 225 CMR 14.08-14.09.

38. A “Compliance Filing” is a “document filed annually by a Retail Electricity Supplier with [DOER] documenting compliance with” the RPS Class I requirements during a calendar year. 225 CMR 14.02.

39. A RES must submit a Compliance Filing to DOER no later than the first day of July, or the first business day thereafter, of the subsequent year. 225 CMR 14.09(1).

40. A RES must document in its Compliance Filing the total megawatts of electrical energy it allocated to End-use Customers for the year and any banked RECs it is applying to its regulatory requirements. 225 CMR 14.09(2). It must also include the total quantity of its RPS Class I obligation that it allocated or should have allocated to its Massachusetts End-use Customers for the year. 225 CMR 14.09(2).

41. DOER verifies the accuracy of a RES’s Compliance Filing by comparing the information provided by the RES with data DOER receives directly from electricity generators.

42. If a RES fails to comply with RPS Class I requirements, DOER issues a notice of non-compliance to the RES and if it fails to come back into compliance, DOER petitions the Massachusetts Department of Public Utilities (DPU) for licensure action. 225 CMR 14.12(1), (4).

43. A RES who violates the RPS Class I is subject to a civil penalty not to exceed \$5,000 per offense. M.G.L. c.25A, § 7.

Renewable Energy Portfolio Standard Class II

44. As part of its amendments to the RPS, the GCA created a second set of standards under the RPS that a RES must meet: “RPS Class II.”

45. A RES selling electricity to End-use Customers in the state must buy each calendar year a minimum percentage of energy from two types of energy sources DOER regulations classify as (1) RPS Class II renewable and (2) RPS Class II waste energy sources. A RES demonstrates its purchase of renewable energy through ownership of the accompanying RECs from NEPOOL.

46. A RES may bank RECs for compliance in either or both of the two subsequent years after it obtains them provided that the RES is in compliance with 225 CMR 15.00 for all previous years. 225 CMR 15.08(2).

47. If the RES does not buy at least the minimum required amount of RPS Class II RECs by the annual July 1st compliance deadline and does not have sufficient banked RECs to meet the minimum requirement, the RES must comply with the regulatory mandate by making an Alternative Compliance Payment to the Commonwealth through MassCEC. M.G.L. c. 25A, § 11F(d); 225 CMR 15.08(3).

48. The definitions of “Retail Electricity Supplier,” “End-use Customer,” “Alternative Compliance Payment” and “Compliance Filing” are the same for RPS Class I and II. 225 CMR 15.02.

49. DOER calculates the ACP a RES owes for the RPS Class II by multiplying the amount of RPS Class II renewable or waste energy a RES must buy for the year (in MWh) by a dollar rate per MWh that DOER sets each year. 225 CMR 15.08(3)-(4).

50. DOER publishes the minimum percentage of RPS Class II renewable and waste energy a RES must buy each year. 225 CMR 15.07.

51. A RES meets the RPS Class II requirements by buying RPS Class II RECs from NEPOOL and documenting its REC purchases in its annual Compliance Filing to DOER. 225 CMR 15.09(2).

52. A RES must submit its Compliance Filing to DOER no later than the first day of July, or the first business day thereafter, of the subsequent year. 225 CMR 15.09(1).

53. A RES must document in its Compliance Filing the total megawatts of electrical energy it allocated to End-use Customers in the year and any banked RECs it is applying to its regulatory requirements. 225 CMR 15.09(2). Its Compliance Filing must also include the total quantity of its RPS Class II obligation that it correctly allocated or should have allocated to its Massachusetts End-use Customers. 225 CMR 15.09(2).

54. A RES may submit its RPS Class II allocation information along with its RPS Class I allocation information in one annual combined Compliance Filing to DOER.

55. DOER verifies the accuracy of a RES's Compliance Filing by comparing the information provided by the RES with data DOER receives directly from electricity generators.

56. If a RES fails to comply with RPS Class II requirements, DOER issues a notice of non-compliance to the RES and if it fails to come back into compliance, DOER petitions its findings to DPU for licensure action. 225 CMR 15.12(1), (4).

57. A RES which violates the RPS Class II is subject to a civil penalty not to exceed \$5,000 per offense. M.G.L. c.25A, § 7.

Alternative Renewable Energy Portfolio Standard

58. In 2008, the GCA also established the Alternative Renewable Energy Portfolio Standard (APS).

59. In addition to meeting the RPS Class I and II requirements, a RES selling electricity to End-use Customers in the state must buy each calendar year a minimum percentage of its energy from alternative renewable energy sources. A RES demonstrates its purchase of alternative renewable energy through ownership of the accompanying AECs from NEPOOL.

60. A RES may bank AECs for compliance in either or both of the two subsequent years after it obtains them provided that the RES is in compliance with 225 CMR 16.00 for all previous years. 225 CMR 16.08(2).

61. If the RES does not buy the minimum required amount of AECs by the compliance deadline and does not have sufficient banked AECs to meet the minimum requirement, a RES must comply with the regulatory mandate by making an ACP to the Commonwealth through MassCEC. M.G.L. c. 25A, § 11F 1/2(a); 225 CMR 16.08.

62. The definitions of “Retail Electricity Supplier,” “End-use Customer,” “Alternative Compliance Payment” and “Compliance Filing” for the APS are the same as the definitions for the RPS Class I and II. 225 CMR 16.02.

63. DOER calculates the ACP a RES owes for the APS by multiplying the amount of alternative renewable energy (in MWh) a RES must buy for the year by a dollar rate per MWh that DOER sets each year. 225 CMR 16.08(3).

64. DOER publishes the minimum percentage of alternative renewable energy a RES must buy each year. 225 CMR 16.07(1)-(2).

65. A RES meets the APS requirement by buying AECs from NEPOOL and documenting its AEC purchases in an annual Compliance Filing to DOER. 225 CMR 16.09(2).

66. A RES must submit its Compliance Filing to DOER no later than the first day of July, or the first business day thereafter, of the subsequent year. 225 CMR 16.09(1).

67. A RES must document in its Compliance Filing the total megawatts of electrical energy it allocated to End-use Customers in the year and any banked AECs it is applying to its regulatory requirements. 225 CMR 16.09(2). It must also include the total quantity of its APS obligation that it correctly allocated or should have allocated to its Massachusetts End-use Customers. 225 CMR 16.09(2).

68. A RES may submit its APS allocation information along with its RPS Class I and II allocation information in one combined annual Compliance Filing to DOER.

69. DOER verifies the accuracy of a RES's Compliance Filing by comparing the information provided by the RES with data DOER receives directly from electricity generators.

70. If a RES fails to comply with APS requirements, DOER issues a notice of non-compliance to the RES and if it fails to come back into compliance, DOER petitions DPU for licensure action. 225 CMR 16.12(1), (4).

71. An RES which violates the APS is subject to a civil penalty not to exceed \$5,000 per offense. M.G.L. c.25A, § 7.

Clean Energy Standard

72. In 2008, the Global Warming Solutions Act (GWSA) became law in Massachusetts. The GWSA requires the Executive Office of Energy and Environmental Affairs (EOEEA) (which DEP is a part of) to set greenhouse gas emission reduction goals via regulations.

73. In August 2017, DEP promulgated 310 CMR 7.75, the Clean Energy Standard (CES), as a companion regulation to 310 CMR 7.74, Reducing CO₂ Emissions from Electricity Generating Facilities, to reduce greenhouse gas emissions pursuant to the GWSA.

74. Under the CES, a Retail Seller of Electricity (RSE) selling electricity to End-use Customers in the state must buy a minimum percentage of its energy from clean energy sources each year. A RSE demonstrates its purchase of clean energy through ownership of the accompanying CECs from NEPOOL. If the RSE does not buy the minimum required amount of CECs before the compliance deadline, an RSE must comply with the regulatory mandate by making an ACP to the Commonwealth through DEP. 310 CMR 7.75(2), (4), (5).

75. A Retail Seller of Electricity (RSE) or Retail Seller is “a competitive supplier licensed by the Department of Public Utilities” and is equivalent to the term “Retail Electricity Supplier” (RES) the APS and the RPS Class I and II programs use.¹ 310 CMR 7.75(2).

76. The definitions of “End-use Customer,” “CES Alternative Compliance Payment (CES ACP)” and “Compliance Filing” are substantially the same as the definitions for the APS and the RPS Class I and II. 310 CMR 7.75(2).

77. DEP calculates the ACP a RES owes for the CES by multiplying the amount of electricity with clean energy a RES must buy for each year (in MWh) with a multiplier of the CES rate established by DOER for each year. 310 CMR 7.75(5)(c)(1).

78. The minimum percentage of clean energy a RES must buy each year is listed in DEP regulations. 310 CMR 7.75(4).

79. A RES’s ACP for RPS Class I shall be counted towards its CES ACP obligation. 310 CMR 7.75(5)(c).

80. A RES meets the CES requirement by buying Class I RECs or CECs from NEPOOL and documenting its REC and CEC purchases in an annual Compliance Filing to DOER. 310 CMR 7.75(6)(b), 7.75(5).

¹ For consistency, this Complaint will use the term “RES” in lieu of “RSE” when referring to a retail seller of electricity.

81. A RES must submit its Compliance Filing to DEP no later than the first day of July, or the first business day thereafter, of the subsequent year. 310 CMR 7.75(6)(a).

82. A RES must document in its Compliance Filing the total megawatts of electrical energy it allocated to End-use Customers in the year. 310 CMR 7.75(6)(b). It must also include the total quantity of its CES obligation that it correctly allocated or should have allocated to its Massachusetts End-use Customers. 310 CMR 7.75(6)(b).

83. A RES may submit its CES allocation information along with its APS and RPS Class I and II allocation information in one combined annual Compliance Filing to DOER.

84. A RES must also report its megawatt hours sold and associated greenhouse gas emissions for each year to DEP in a form DEP provides. 310 CMR 7.75(9)(c).

85. DEP verifies the accuracy of a RES's Compliance Filing by comparing the information provided by the RES with data DOER receives directly from electricity generators.

86. If a RES fails to comply with CES requirements, the RES may be subject to administrative orders and/or civil penalties under M.G.L. c. 21A, § 16 and 310 CMR 5.00, and fines, imprisonment, civil penalties, and/or injunctive action under M.G.L. c. 111, §§ 2C, 142A-142E; and M.G.L. c. 21N, § 7(d). 310 CMR 7.75(13).

C. SPECIFIC ALLEGATIONS

87. UER registered as a foreign limited liability company in Massachusetts on July 9, 2015.

88. DPU licensed UER as a competitive electric supplier on April 14, 2016.

89. UER is a RES and RSE as defined by state regulations.

90. From 2016 to 2019, UER sold electricity to Massachusetts End-use Customers.

91. As a business selling electricity to End-use Customers in Massachusetts, UER promoted itself on its website as “ensuring that a portion of [its] customer’s Energy is provided by renewable resources.”

92. UER complied with the requirements of the RPS, APS and CES in 2016.

93. UER complied with the requirements of the RPS, APS and CES in 2017.

94. Despite UER knowing its obligations under the RPS, APS and CES, and having complied in earlier years, UER failed to meet the requirements of those programs in 2018 and 2019 as described below.

2018

A. Renewable Energy Portfolio Standard Class I

95. In order to meet its RPS Class I obligations for 2018 as a RES, UER had to buy a minimum of 13% RPS Class I renewable energy. 225 CMR 14.07. If UER did not meet this requirement by buying RPS Class I RECs, UER had to comply with the regulatory mandate by making an ACP to the Commonwealth. 225 CMR 14.08(3).

96. UER had an insufficient number of banked RPS Class I RECs to meet the RPS Class I statutory requirements in 2018.

97. UER did not buy enough RPS Class I RECs for 2018 to meet its statutory obligation.

98. UER failed to make an ACP to the Commonwealth in lieu of purchasing the required amount of RPS Class I RECs to meet its RPS Class I obligations for 2018.

99. UER failed to submit a Compliance Filing documenting its compliance with RPS Class I obligations for 2018 in violation of 225 CMR 14.09(1).

B. Renewable Energy Portfolio Standard Class II

100. In order to meet its RPS Class II obligations for 2018 as a RES, UER had to buy a minimum of two categories of renewable energy: (1) 2.6155% RPS Class II renewable energy; and (2) 3.5% RPS Class II waste energy. 225 CMR 15.07(1)-(2). If UER did not meet these requirements by buying RPS Class II RECs, UER had to comply with the regulatory mandate by making an ACP to the Commonwealth. 225 CMR 15.08(3).

101. UER had an insufficient number of banked RPS Class II RECs to meet its RPS Class II statutory requirements in 2018.

102. UER did not buy enough RPS Class II RECs for 2018 to meet its statutory obligation.

103. UER failed to make an ACP to the Commonwealth in lieu of purchasing the required amount of RPS Class II RECs to meet its RPS Class II obligations for 2018.

104. UER failed to submit a Compliance Filing documenting its compliance with RPS Class II obligations for 2018 in violation of 225 CMR 15.09(1).

C. Alternative Renewable Energy Portfolio Standard

105. In order to meet its APS obligations for 2018 as a RES, UER had to buy a minimum of 4.5% alternative renewable energy. 225 CMR 16.06. If UER did not meet this requirement by buying AECs, UER had to comply with the regulatory mandate by making an ACP to the Commonwealth. 225 CMR 16.07(3).

106. UER had no banked AECs in 2018.

107. UER did not buy AECs for 2018.

108. UER failed to make an ACP to the Commonwealth in lieu of purchasing the required amount of AECs to meet its APS obligations for 2018.

109. UER failed to submit a Compliance Filing documenting its compliance with APS obligations for 2018. 225 CMR 16.08(1).

D. Clean Energy Standard

110. In order to meet its CES obligations for 2018 as a RES, UER had to buy a minimum of 16% RECs and CECs. 310 CMR 7.75(4). If UER did not meet this requirement by buying RECs and CECs, UER had to comply with the regulatory mandate by making an ACP to the Commonwealth. 310 CMR 7.75(5)(c).

111. UER did not buy enough RECs for 2018 to meet its statutory obligation.

112. UER did not buy CECs for 2018 to meet its statutory obligation.

113. UER failed to make an ACP to the Commonwealth in lieu of purchasing the required amount of RECs and CECs to meet its CES obligations for 2018.

114. UER failed to submit a Compliance Filing documenting its compliance with CES obligations for 2018 and its greenhouse gas emissions report. 310 CMR 7.75(6), (9)(c).

E. Defendant's ACP obligations for 2018

115. DOER and DEP sent multiple notifications to UER that placed it on notice of UER's 2018 RPS, APS and CES obligations, but, despite these notifications, UER failed to comply with its 2018 obligations in violation of the RPS, APS and CES.

116. Specifically, on April 17, 2019, DOER sent notice by electronic mail to UER of its banked certificates available for its 2018 Compliance Filing. In the notice, DOER requested that UER contact it immediately if the numbers were incorrect.

117. On May 15, 2019, DOER sent notice by electronic mail to UER of its load obligation for 2018 (the amount of electricity it had sold to Massachusetts customers that year). In the notice, DOER requested that UER contact it immediately if the number was incorrect.

118. On May 21, 2019, DOER sent notice by electronic mail to UER that the 2018 RPS/APS/CES annual compliance workbook was available for UER to fill out.

119. On July 2, 2019, DOER sent notice by electronic mail to UER that its 2018 Compliance Filing was overdue.

120. On July 9, 2019, DOER sent notice by electronic mail to UER that its 2018 Compliance Filing was overdue and that UER did not make an ACP in lieu of meeting its RPS and APS minimum standard obligations by buying RECs and AECs. DOER requested that UER submit its Compliance Filing and make the ACP by July 16, 2019. If UER did not, DOER would commence the steps to issuing a notice of non-compliance to UER. UER did not make the payment.

121. On August 21, 2019, DOER issued a notice of non-compliance to UER. In the notice, DOER informed UER that it had failed to comply with its RPS Class I and Class II and APS obligations for 2018. DOER notified UER that it must pay \$771,101.44 in ACPs because it had not bought the required NEPOOL certificates to meet its regulatory obligations for 2018. UER did not make the payment.

122. On September 2, 2019, UER sent DOER a letter acknowledging the notice of non-compliance but stating that UER was leaving the Massachusetts market and that UER was unable to meet its financial obligations. UER did not indicate that it would attempt to pay the money owed.

123. On October 1, 2019, DEP also issued UER a notice of non-compliance. In the notice, DEP informed UER that it had failed to comply with its CES obligations for 2018. In order to come into compliance with the CES, DEP notified UER that it must pay a RPS Class I ACP of \$713,629.80 and a CES ACP of \$41,427.72 to the Commonwealth. Alternatively, UER

could make a CES ACP of \$219,758.28 to the Commonwealth to comply with its CES obligations, but that would not have brought UER into compliance with DOER's programs. UER did not make any payment.

124. On October 29, 2019, UER sent DEP a letter acknowledging the notice of non-compliance but stating that UER was leaving the Massachusetts market and that UER was unable to meet its financial obligations. UER did not indicate that it would attempt to pay the money owed.

125. To date, UER has not paid to the Commonwealth the amount owed to DOER indicated in the notice of non-compliance sent to UER on August 21, 2019 and has not submitted its 2018 Compliance Filing to DOER.

126. To date, UER has not paid to the Commonwealth the amount owed to DEP indicated in the notice of non-compliance sent to UER on October 1, 2019 and has not submitted its 2018 Compliance Filing or greenhouse gas emissions report to DEP.

2019

A. Renewable Energy Portfolio Standard Class I

127. In order to meet its RPS Class I obligations for 2019 as a RES, UER had to buy a minimum of 14% of RPS Class I renewable energy. 225 CMR 14.07. If UER did not meet this requirement by buying RPS Class I RECs, UER had to comply with the regulatory mandate by making an ACP to the Commonwealth. 225 CMR 14.08(3).

128. UER did not buy any RPS Class I RECs for 2019.

129. UER failed to make an ACP to the Commonwealth in lieu of purchasing the required amount of RPS Class I RECs to meet its RPS Class I obligations for 2019.

130. UER failed to submit a Compliance Filing documenting its compliance with RPS Class I obligations for 2019.

B. Renewable Energy Portfolio Standard Class II

131. In order to meet its RPS Class II obligations for 2019 as a RES, UER had to buy a minimum of two categories of energy: (1) 2.6883% RPS Class II renewable energy and (2) 3.5% RPS Class II waste energy. 225 CMR 15.07(1)-(2). If UER did not meet this requirement by buying RPS Class II RECs, UER had to comply with the regulatory mandate by making an ACP to the Commonwealth. 225 CMR 15.08(3).

132. UER did not buy any RPS Class II RECs for 2019.

133. UER failed to make an ACP to the Commonwealth in lieu of purchasing the required amount of RPS Class II RECs to meet its RPS Class II obligations for 2019.

134. UER failed to submit a Compliance Filing documenting its compliance with RPS Class II obligations for 2019.

C. Alternative Renewable Energy Portfolio Standard

135. In order to meet its APS obligations for 2019 as a RES, UER had to buy a minimum of 4.75% alternative renewable energy. 225 CMR 16.06. If UER did not meet this requirement by buying AECs, UER had to comply with the regulatory mandate by making an ACP to the Commonwealth. 225 CMR 16.07(3).

136. UER did not buy any AECs for 2019.

137. UER failed to make an ACP to the Commonwealth in lieu of purchasing the required amount of AECs to meet its APS obligations for 2019.

138. UER failed to submit a Compliance Filing documenting its compliance with APS obligations for 2019. 225 CMR 16.08(1).

D. Clean Energy Standard

139. In order to meet its CES obligations for Compliance Year 2019 as a RES, UER had to buy a minimum of 18% of RECs and CECs. 310 CMR 7.75(4). If UER did not meet this requirement by buying RECs and CECs, UER had to comply with the regulatory mandate by making an ACP to the Commonwealth. 310 CMR 7.75(5)(c).

140. UER did not buy any CECs for 2019.

141. UER did not buy any RECs for 2019.

142. UER failed to make an ACP to the Commonwealth in lieu of purchasing the required amount of RECs and CECs to meet its CES obligations for 2019.

143. UER failed to submit a Compliance Filing documenting its compliance with CES obligations for 2019 and its greenhouse gas emissions report. 310 CMR 7.75(6), (9)(c).

E. Defendant's ACP obligations for 2019

144. DOER sent multiple notifications to UER to put it on notice of UER's 2019 RPS, APS and CES obligations. Despite these notifications, UER failed to comply with its 2019 obligations in violation of the RPS, APS and CES.

145. Specifically, on May 21, 2020, DOER sent notice by electronic mail to UER of its load obligation for 2019. In the notice, DOER requested that UER contact it immediately if the number was incorrect.

146. On July 6, 2020, DOER sent notice by electronic mail to UER that its 2019 Compliance Filing was overdue.

147. Because it did not buy RECs or AECs when they were available for purchase in Compliance Year 2019, UER was required to comply with the regulatory mandate by making an

ACP to the Commonwealth for its RPS Class I and II and APS obligations for Compliance Year 2019. To date, UER has not made the payment or any other ACP for 2019.

148. UER was required to pay at least \$11,908.97 for its RPS Class I and II and APS obligations for Compliance Year 2019. To date, UER has not made the payment or any other ACP for 2019.

149. Because it did not buy RECs or CECs when they were available for purchase in Compliance Year 2019, UER was required to comply with the regulatory mandate by making an ACP to the Commonwealth for its CES obligations for Compliance Year 2019. To date, UER has not made the payment or any other ACP for 2019.

150. UER was required to pay at least \$3,962.25 for its CES obligations for Compliance Year 2019. To date, UER has not made the payment or any other ACP for 2019.

151. Alternatively, UER was required to pay at least \$898.11 for its CES obligations for Compliance Year 2019 if it made an ACP of at least \$10,954.96 to the Commonwealth for its RPS Class I obligations. To date, UER has not made the payment or any other ACP for 2019.

152. On June 2, 2021, DEP issued an invoice to UER for \$3,962.25 for its 2019 CES ACP. To date, UER has not made the payment or any other ACP for 2019.

153. To date, UER has not paid ACPs owed to the Commonwealth for Compliance Year 2019 or submitted its 2019 Compliance Filings or greenhouse gas emissions report to DEP.

CAUSES OF ACTION

Count I

(Violation of the Renewable Energy Portfolio Standard, M.G.L. c. 25A, § 11F)

154. The Commonwealth re-alleges the allegations contained above and incorporates them herein by reference.

155. Pursuant to M.G.L. c. 25A, § 7, any supplier of electricity from whom DOER has the authority to collect price, inventory and product delivery data who violates provisions of Chapter 25A is subject to a civil penalty not to exceed \$5,000 per offense.

156. Pursuant to M.G.L. c. 25A, §§ 3, 7, 11F and 11F 1/2, and 225 CMR 14.08, 15.08 and 16.08, UER is a supplier of electricity from whom DOER has the authority to collect price, inventory and product delivery data.

157. By failing to purchase the requisite number of Class I and Class II RECs to meet its statutory obligations, or in the alternative make the Alternative Compliance Payments to the Commonwealth in 2018 and 2019, UER violated M.G.L. c. 25A, § 11F.

158. By failing to submit the statutorily mandated Compliance Filings to the Commonwealth in 2018 and 2019, UER violated M.G.L. c. 25A, § 11F.

159. As a result of UER's violations, the Commonwealth sustained damages.

Count II

(Violation of the Alternative Renewable Energy Portfolio Standard, M.G.L. c. 25A, § 11F

1/2)

160. The Commonwealth re-alleges the allegations contained above and incorporates them herein by reference.

161. By failing to purchase the requisite number of AECs to meet its statutory obligations, or in the alternative make the Alternative Compliance Payments to the Commonwealth in 2018 and 2019, UER violated M.G.L. c. 25A, § 11F 1/2.

162. By failing to submit the statutorily mandated Compliance Filings to the Commonwealth in 2018 and 2019, UER violated M.G.L. c. 25A, § 11F 1/2.

163. As a result of UER's violations, the Commonwealth sustained damages.

Count III

(Violation of the Clean Air Act, M.G.L. c. 111, §§ 142A-142E)

164. The Commonwealth re-alleges the allegations contained above and incorporates them herein by reference.

165. Pursuant to M.G.L. c. 111, § 142A, whoever violates any DEP regulation adopted pursuant to that section is subject to civil penalties of up to \$25,000 for each violation, with each day the violation occurs constituting a separate violation.

166. DEP and the Executive Office of Energy and Environmental Affairs promulgated the Clean Energy Standard, 310 CMR 7.75, pursuant to M.G.L. c. 111, §§ 2C and 142A-142E; c. 21A, §§ 2, 8 and 16; and c. 21N, §§ 3(c), 4 and 7.

167. By failing to purchase the requisite number of CECs to meet its statutory obligations, or in the alternative make the Alternative Compliance Payments to the Commonwealth in 2018 and 2019, UER violated M.G.L. c. 111, §§ 142A-142E.

168. By failing to submit the statutorily mandated Compliance Filings to the Commonwealth in 2018 and 2019, UER violated M.G.L. c. 111, §§ 142A-142E.

169. By failing to submit greenhouse gas emissions reports to the Commonwealth, UER violated M.G.L. c. 111, §§ 142A-142E.

170. As a result of UER's violations, the Commonwealth sustained damages.

Count IV

(Violation of the Massachusetts Consumer Protection Act, M.G.L. c. 93A, § 2)

171. The Commonwealth re-alleges the allegations contained above and incorporates them herein by reference.

172. Pursuant to M.G.L. c. 93A, § 4, any person using unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce is subject to a civil penalty of not more than \$5,000 for each violation of M.G.L. c. 93A, § 2.

173. UER, at all times relevant to this complaint, was a "person" engaged in "trade or commerce" in Massachusetts as defined and used in M.G.L. c. 93A, §§ 1(a)-(b) and 2, because it sold electricity to consumers in the Commonwealth.

174. UER promoted itself to customers as a seller of renewable energy on its website, and by not purchasing the required amount of renewable energy for either 2018 or 2019, UER misrepresented to Massachusetts customers the electricity it sold, retained a financial windfall, and gained an unfair competitive advantage over other similarly situated RES companies that did comply with their statutory obligations.

175. By failing to buy the requisite number of RECs, AECs, or CECs to meet its statutory obligations, or make the Alternative Compliance Payments to the Commonwealth in 2018 and 2019, UER violated M.G.L. c. 93A, § 2.

176. As a result of UER's violations, the Commonwealth sustained damages.

177. On May 25, 2022, the Attorney General notified UER of her intention to file this suit in conformance with M.G.L. c. 93A, § 4.

Count V

(Violation of the False Claims Act, M.G.L. c. 12, § 5B(9))

178. The Commonwealth re-alleges the allegations contained above and incorporates them herein by reference.

179. Pursuant to M.G.L. c. 12, § 5B(9), any person who knowingly and improperly avoids an obligation to pay or transmit money to the Commonwealth or a political subdivision thereof is subject to a civil penalty of not less than \$5,500 and not more than \$11,000 per violation, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, plus three times the amount of damages, including consequential damages, that the Commonwealth or a political subdivision thereof sustains because of such violation.

180. Pursuant to M.G.L. c. 12, §§ 5A(a) and 5C, DEP, DOER and MassCEC are political subdivisions of the Commonwealth.

181. By failing to make the statutorily mandated Alternative Compliance Payments to the Commonwealth in 2018 and 2019, UER violated M.G.L. c. 12, § 5B (9), by knowingly and improperly avoiding its established obligation to pay money to the Commonwealth or a political subdivision thereof for those compliance years.

182. At all relevant times, UER possessed actual knowledge of relevant information, acted with deliberate ignorance of the truth or falsity of the information or acted in reckless disregard of the truth or falsity of the information.

183. As a result of UER's violations, the Commonwealth sustained damages.

Count VI

(Unjust enrichment)

184. The Commonwealth re-alleges the allegations contained above and incorporates them herein by reference.

185. By failing to make the Alternative Compliance Payments to the Commonwealth in 2018 and 2019, UER was unjustly enriched.

186. As a result of UER's unjust enrichment, the Commonwealth sustained damages and is entitled to repayment of the money owed plus interest pursuant to M.G.L. c. 231, § 6C.

PRAYERS FOR RELIEF

WHEREFORE, the Commonwealth requests that this Court:

1. As to Count I, enter judgment in favor of the Commonwealth and against UER and:
 - a. Order UER to comply with the requirements of M.G.L. c. 25A, § 11F, by making the required Alternative Compliance Payments and submitting UER's 2018 and 2019 Compliance Filings; and
 - b. Award the Commonwealth a \$5,000 civil penalty per offense for each violation of M.G.L. c. 25A, § 11F, pursuant to M.G.L. c. 25A, § 7; and
2. As to Count II, enter judgment in favor of the Commonwealth and against UER and:

- a. Order UER to comply with the requirements of M.G.L. c. 25A, § 11F 1/2 by making the required Alternative Compliance Payments and submitting UER's 2018 and 2019 Compliance Filings; and
 - b. Award the Commonwealth a \$5,000 civil penalty per offense for each violation of M.G.L. c. 25A, § 11F 1/2 pursuant to M.G.L. c. 25A, § 7; and
3. As to Count III, enter judgment in favor of the Commonwealth and against UER and:
- a. Order UER to comply with the requirements of M.G.L. c. 111, §§ 142A-142E, and 310 CMR 7.75 by making the required Alternative Compliance Payments and submitting UER's 2018 and 2019 Compliance Filings and greenhouse gas emission reports; and
 - b. Award the Commonwealth a \$25,000 per day civil penalty for each day of violation of 310 CMR 7.75 pursuant to M.G.L. c. 111, § 142A; and
4. As to Count IV, enter judgment in favor of the Commonwealth and against UER and:
- a. Award the Commonwealth damages pursuant to M.G.L. c. 93A, § 4;
 - b. Award the Commonwealth a \$5,000 civil penalty for each Massachusetts Consumer Protection Act violation pursuant to M.G.L. c. 93A, § 4;
 - c. Award the Commonwealth its costs and fees for the investigation and prosecution of this action pursuant to M.G.L. c. 93A, § 4; and
5. As to Count V, enter judgment in favor of the Commonwealth and against UER and:
- a. Award the Commonwealth treble damages pursuant to M.G.L. c. 12, § 5B;
 - b. Award the Commonwealth a \$17,485 civil penalty for each false claim violation pursuant to M.G.L. c. 12, § 5B;

- c. Award the Commonwealth its costs and fees for the investigation and prosecution of this action pursuant to M.G.L. c. 12, § 5B, and M.G.L. c. 12, § 5I; and
6. As to Count VI, enter judgment in favor of the Commonwealth and against UER and award the Commonwealth damages plus applicable interest; and
7. Award the Commonwealth such other relief as the Court deems appropriate.

The Commonwealth requests a jury trial on all claims so triable.

Dated: June 27, 2022

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS,

By its attorneys,

MAURA HEALEY,
Attorney General

/s/ Amy Crafts

Amy Crafts, BBO #667844
Chief, False Claims Division
Christina Chan, BBO #677703
Deputy Chief, False Claims Division
Assistant Attorneys General
Deputy Chief, False Claims Division
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
(617) 963-2912

GLENN CUNHA,
Inspector General

Susanne M. O'Neil

Susanne M. O'Neil, BBO #567769
Special Assistant Attorney General
General Counsel
Office of the Inspector General
One Ashburton Place, Room 1311
Boston, MA 02108
(617) 722-8868

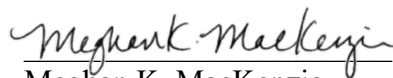
Meghan K. MacKenzie

Meghan K. MacKenzie, BBO #682431
William J. Durkin, BBO #678403
Office of the Inspector General
One Ashburton Place, Room 1311
Boston, MA 02108
(617) 722-8893

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was e-filed and sent to the defendant's counsel David Lazarus, Esq. via email to dlazarus@verril-law.com and Assistant Attorney General Amy Crafts to amy.crafts@mass.gov.

Dated: June 30, 2022



Meghan K. MacKenzie
Lead Counsel
Office of the Inspector General