

## 35-A §3210-C. CAPACITY RESOURCE ADEQUACY

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**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Capacity resource" means any renewable capacity resource, nonrenewable capacity resource or interruptible, demand response or energy efficiency capacity resource. [2007, c. 293, §1 (AMD) .]

A-1. "Contract for differences" means a contractual arrangement between a buyer and a seller in which cash payments are made based on the actual or relative difference between a target price for energy or a capacity resource and the market value of the energy or capacity resource. Under a contract for differences, the seller pays to the buyer the positive difference between the market value and the target price and the buyer pays to the seller the negative difference between the market value and the target price. "Contract for differences" does not include a contract for the physical delivery of energy or capacity resources. [2007, c. 656, Pt. B, §1 (NEW) .]

B. "Interruptible, demand response or energy efficiency capacity resource" means a resource that has demand response, interruptible or energy efficiency capacity recognized by the commission. [2005, c. 677, Pt. C, §1 (NEW) .]

C. "New" as applied to any capacity resource means a capacity resource that:

- (1) Has an in-service date after September 1, 2005;
- (2) Was added to an existing facility after September 1, 2005;
- (3) For at least 2 years was not operated or was not recognized by the New England independent system operator as a capacity resource and, after September 1, 2005, resumed operation or was recognized by the New England independent system operator as a capacity resource; or
- (4) Was refurbished after September 1, 2005 and is operating beyond its previous useful life or is employing an alternate technology that significantly increases the efficiency of the generation process. [2005, c. 677, Pt. C, §1 (NEW) .]

D. "Nonrenewable capacity resource" means an electric generation resource other than a renewable capacity resource. [2005, c. 677, Pt. C, §1 (NEW) .]

E. "Renewable capacity resource" has the same meaning as in section 3210, subsection 2, paragraph B-3. [2009, c. 542, §6 (AMD) .]

F. "Renewable energy credit" means a tradable instrument that represents an amount of electricity generated from eligible resources as defined in section 3210, subsection 2, paragraph B or renewable capacity resources. [2009, c. 518, §1 (NEW) .]

G. "Triennial plan" has the same meaning as in section 10102, subsection 9. [2009, c. 518, §2 (NEW) .]

[ 2009, c. 518, §§1, 2 (AMD); 2009, c. 542, §6 (AMD) .]

**2. Policy.** It is the policy of this State:

A. That the share of new renewable capacity resources as a percentage of the total capacity resources in this State on December 31, 2007 increase by 10% by 2017 and that, to the extent possible, the increase occur in uniform annual increments; [2005, c. 677, Pt. C, §1 (NEW) .]

B. To reduce electric prices and price volatility for the State's electricity consumers and to reduce greenhouse gas emissions from the electricity generation sector; and [2005, c. 677, Pt. C, §1 (NEW) .]

C. To develop new capacity resources to reduce demand or increase capacity so as to mitigate the effects of any regional or federal capacity resource mandates. [2005, c. 677, Pt. C, §1 (NEW) .]

[ 2005, c. 677, Pt. C, §1 (NEW) .]

**3. Commission authority.** The commission may direct investor-owned transmission and distribution utilities to enter into long-term contracts for:

A. Capacity resources; [2009, c. 518, §3 (AMD) .]

B. Any available energy associated with capacity resources contracted under paragraph A:

(1) To the extent necessary to fulfill the policy of subsection 2, paragraph A; or

(2) If the commission determines appropriate for purposes of supplying or lowering the cost of standard-offer service or otherwise lowering the cost of electricity for the ratepayers in the State. Available energy contracted pursuant to this subparagraph may be sold into the wholesale electricity market in conjunction with solicitations for standard-offer supply bids; and [2009, c. 518, §3 (AMD) .]

C. (CONFLICT: Text as amended by PL 2011, c. 273, §1) Any available renewable energy credits associated with capacity resources contracted under paragraph A. The price paid by the investor-owned transmission and distribution utility for the renewable energy credits must be lower than the price received for those renewable energy credits at the time they are sold by the transmission and distribution utility. [2011, c. 273, §1 (AMD); 2011, c. 273, §3 (AFF) .]

C. (CONFLICT: Text as amended by PL 2011, c. 413, §2) Any available renewable energy credits associated with capacity resources contracted under paragraph A. The price paid by the investor-owned transmission and distribution utility for the renewable energy credits must be lower than the price received for those renewable energy credits at the time they are sold by the investor-owned transmission and distribution utility. [2011, c. 413, §2 (AMD) .]

The commission may permit, but may not require, investor-owned transmission and distribution utilities to enter into contracts for differences that are designed and intended to buffer ratepayers in the State from potential negative impacts from transmission development. To the greatest extent possible, the commission shall develop procedures for long-term contracts for investor-owned transmission and distribution utilities under this subsection having the same legal and financial effect as the procedures used for standard-offer service pursuant to section 3212 for investor-owned transmission and distribution utilities.

The commission may enter into contracts for interruptible, demand response or energy efficiency capacity resources. These contracts are not subject to the rules of the State Purchasing Agent. In a competitive solicitation conducted pursuant to subsection 6, the commission shall allow transmission and distribution utilities to submit bids for interruptible or demand response capacity resources.

Capacity resources contracted under this subsection may not exceed the amount necessary to ensure the reliability of the electric grid of this State, to meet the energy efficiency program budget allocations articulated in the triennial plan as approved by the commission pursuant to section 10104, subsection 4 or any annual update plan approved by the commission pursuant to section 10104, subsection 6 or to lower customer costs as determined by the commission pursuant to rules adopted under subsection 10.

Unless the commission determines the public interest requires otherwise, a capacity resource may not be contracted under this subsection unless the commission determines that the capacity resource is recognized as a capacity resource for purposes of any regional or federal capacity requirements.

The commission shall ensure that any long-term contract authorized under this subsection is consistent with the State's goals for greenhouse gas reduction under Title 38, section 576 and the regional greenhouse gas initiative as described in the state climate action plan required in Title 38, section 577.

[ 2011, c. 273, §1 (AMD); 2011, c. 273, §3 (AFF); 2011, c. 413, §2 (AMD) .]

**4. Priority of capacity resources.** In selecting capacity resources for contracting pursuant to subsection 3, the commission shall apply the following standards.

A. The commission shall select capacity resources that are competitive and the lowest price when compared to other available offers for capacity resources of the same or similar contract duration or terms. [2007, c. 293, §3 (AMD) .]

B. Among capacity resources meeting the standard in paragraph A, the commission shall choose among capacity resources in the following order of priority:

(1) New interruptible, demand response or energy efficiency capacity resources located in this State;

(2) New renewable capacity resources located in this State;

(3) New capacity resources with no net emission of greenhouse gases;

(4) New nonrenewable capacity resources located in this State. The commission shall give preference to new nonrenewable capacity resources with no net emission of greenhouse gases;

(5) Capacity resources that enhance the reliability of the electric grid of this State. The commission shall give preference to capacity resources with no net emission of greenhouse gases; and

(6) Other capacity resources. [2005, c. 677, Pt. C, §1 (NEW) .]

[ 2007, c. 293, §3 (AMD) .]

**5. Contract term.** A contract entered into pursuant to subsection 3 may not be for more than 10 years, unless the commission finds a contract for a longer term to be prudent.

[ 2005, c. 677, Pt. C, §1 (NEW) .]

**6. Competitive solicitation process and contract negotiation.** Except as provided in paragraph A, for purposes of selecting potential capacity resources for contracting pursuant to subsection 3, the commission shall conduct a competitive solicitation no less often than every 3 years if the commission determines that the likely benefits to ratepayers resulting from any contracts entered into as a result of the solicitation process will exceed the likely costs. Following review of bids, the commission may negotiate with one or more potential suppliers. When only one bid has been offered, the commission shall ensure that negotiations are based on full project cost disclosure by the potential supplier. The commission shall negotiate contracts that are commercially reasonable and that commit all parties to commercially reasonable behavior.

A. The commission shall, for purposes of selecting energy efficiency capacity resources and available energy associated with such resources for contracting pursuant to subsection 3, conduct a competitive solicitation in accordance with this subsection or contract with the Efficiency Maine Trust established in section 10103 to deliver those resources through a competitive solicitation process administered by the trust. [2009, c. 518, §4 (NEW) .]

[ 2009, c. 518, §4 (AMD) .]

**7. Disposition of resources.** An investor-owned transmission and distribution utility shall sell capacity resources, energy or renewable energy credits purchased pursuant to subsection 3 or take other action relative to such capacity resources, energy or renewable energy credits as directed by the commission.

[ 2009, c. 518, §5 (AMD) .]

**8. Cost recovery.** The commission shall ensure that an investor-owned transmission and distribution utility recovers in rates all costs of contracts entered into pursuant to subsection 3, including but not limited to any impacts on the utility's costs of capital. A price differential existing at any time during the term of the

contract between the contract price and the prevailing market price at which the capacity resource is sold or any gains or losses derived from contracts for differences must be reflected in rates and may not be deemed to be imprudent.

[ 2009, c. 415, Pt. A, §23 (RPR) .]

**9. Contract payments.** Except as provided in paragraphs A and B, contracts for capacity resources, related energy or renewable energy credits entered into pursuant to this section must provide that payments will be made only after contracted amounts of capacity resources, related energy or renewable energy credits have been provided.

A. Contracts with the Efficiency Maine Trust established in section 10103 for energy efficiency capacity resources and related energy entered into pursuant to this section may provide that up to 20% of the total payment be made at the start of the contract. Such contracts must provide that the remaining payments will be made only after the supplier has demonstrated, according to measurement and verification protocols specified in rules adopted by the Efficiency Maine Trust Board pursuant to section 10105, subsection 5, that physical installations have been completed and contracted amounts of capacity resources and related energy have been substantiated. [2009, c. 518, §6 (NEW) .]

B. Contracts with any entity other than the Efficiency Maine Trust established in section 10103 for energy efficiency capacity resources and related energy must provide that payments will be made only after the supplier has demonstrated, according to measurement and verification protocols specified in rules adopted by the Efficiency Maine Trust Board pursuant to section 10105, subsection 5, that physical installations have been completed and contracted amounts of capacity resources and related energy have been substantiated. [2009, c. 518, §6 (NEW) .]

[ 2009, c. 518, §6 (AMD) .]

**10. Rules.** The commission shall adopt rules to implement this section. In adopting rules, the commission shall consider the financial implications of this section for investor-owned transmission and distribution utilities. Rules adopted under this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

[ 2011, c. 273, §2 (AMD); 2011, c. 273, §3 (AFF) .]

**11. Customer benefits.** The commission may direct investor-owned transmission and distribution utilities to enter into contracts under this section only as agents for their customers and only when such contracts are in the best interest of customers and in accordance with this subsection. The commission shall adopt rules to ensure that:

A. To the extent the benefits to ratepayers of a long-term contract are projected to occur in the later years of the contract term, the commission shall ensure that adequate financial security is in place so that it is reasonably likely ratepayers will obtain the projected benefits of the long-term contract; and [2011, c. 413, §3 (NEW) .]

B. To the extent practicable, ratepayers obtain the benefit of lower cost capacity resources of energy associated with those resources or of any renewable energy credits that may exist after the term of primary financing or subsequent replacement financing necessary for the development and construction of a generation project is completed. [2011, c. 413, §3 (NEW) .]

[ 2011, c. 413, §3 (NEW) .]

**12. Triennial plan energy efficiency contracts.** The commission, in accordance with this subsection, may direct transmission and distribution utilities to enter into long-term contracts with the trust to meet the energy efficiency program budget allocations articulated in the triennial plan approved by the commission pursuant to section 10104, subsection 4.

A. If the commission determines that the assessments on transmission and distribution utilities under section 10110, subsections 4 and 5 will not provide sufficient funds to meet the energy efficiency program budget allocations articulated in the triennial plan or any annual update plan approved by the commission pursuant to section 10104, subsection 6, the commission may direct investor-owned transmission and distribution utilities to enter into long-term contracts for energy efficiency capacity resources and any available energy associated with those resources to the extent necessary to meet the energy efficiency program budget allocations articulated in the triennial plan or annual update plan. If those contracts result in a fee or assessment on ratepayers, the commission may only direct an investor-owned transmission and distribution utility to enter into those contracts if:

(1) The commission provides notification to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters of the proposed contract or contracts; and

(2) The Legislature:

(a) Specifically authorizes the contract or contracts; or

(b) Allocates an amount of funds from the account established under paragraph B that is no less than the total funds that will be deposited in the account under all proposed contracts over the full terms of those contracts. [2011, c. 413, §3 (NEW).]

B. The Energy Efficiency Capacity Contract Account, referred to in this paragraph as "the account," is established in the Efficiency Maine Trust. The account is a nonlapsing account. Except as otherwise expressly directed by legislation approving the contract or contracts pursuant to paragraph A, subparagraph (2), division (a), all payments from contracts entered into pursuant to this subsection must be deposited in the account. Notwithstanding Title 5, section 1667-B, the State Budget Officer may not allot an amount in any fiscal year that is greater than the allocation pursuant to paragraph A, subparagraph (2), division (b). [2011, c. 413, §3 (NEW).]

[ 2011, c. 413, §3 (NEW) .]

#### SECTION HISTORY

2005, c. 677, §C1 (NEW). 2007, c. 293, §§1-4 (AMD). 2007, c. 575, §§2-5 (AMD). 2007, c. 656, Pt. B, §§1-5 (AMD). 2009, c. 415, Pt. A, §§21-23 (AMD). 2009, c. 518, §§1-6 (AMD). 2009, c. 542, §6 (AMD). 2011, c. 273, §§1, 2 (AMD). 2011, c. 273, §3 (AFF). 2011, c. 413, §§2, 3 (AMD).

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