

Chapter 316: LONG-TERM CONTRACTING AND RESOURCE ADEQUACY

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**SUMMARY:** This Chapter establishes the requirements, standards and procedures governing the authorization of long-term contracts for capacity resources and associated energy and establishes an electric resource adequacy plan.

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**TABLE OF CONTENTS**

§ 1 PURPOSE .....3

§ 2 POLICIES.....3

§ 3 DEFINITIONS .....3

§ 4 CONTRACTING AUTHORITY.....5

    A. General Authority.....5

    B. Contracting Limits .....5

    C. Contract Type.....5

§ 5 COMPETITIVE SOLICITATION PROCESS.....6

    A. Periodic Solicitations .....6

    B. Requests for Proposals: Standard Form Contracts.....6

    C. Evaluation of Proposals and Bidder Negotiations.....6

    D. Evaluation Criteria .....7

        1. Ratepayer Value .....7

        2. Resource Priority.....7

        3. Greenhouse Gas Reduction Policy.....8

    E. Energy Efficiency Programs .....8

        1. Long-Term Contract.....8

        2. Process .....8

F.	Customer Benefits .....	9
1.	Financial Security .....	9
2.	Lower Cost Capacity and Energy Resources .....	9
<b>§ 6</b>	<b>CONTRACTING .....</b>	<b>9</b>
A.	Utilities.....	9
B.	Commission.....	10
C.	Contract Term .....	10
D.	Contract Payments .....	10
E.	Commercial Reasonableness.....	10
<b>§ 7</b>	<b>DISPOSITION OF RESOURCES.....</b>	<b>10</b>
<b>§ 8</b>	<b>COST RECOVERY .....</b>	<b>11</b>
A.	Contract Costs .....	11
B.	Administration Costs.....	11
C.	Capital Costs .....	11
<b>§ 9</b>	<b>ELECTRIC RESOURCE ADEQUACY PLAN.....</b>	<b>11</b>
A.	Report and Plan.....	11
	Contents.....	11
B.	Plan Development .....	12
C.	Public Participation .....	12
D.	Plan Implementation .....	12
E.	Utility Reports.....	13
<b>§ 10</b>	<b>WAIVER OR EXEMPTION .....</b>	<b>13</b>

## § 1 PURPOSE

The purpose of this Chapter is to implement the State's policy to use long-term contracts for capacity resources and a resource adequacy plan to ensure grid reliability and minimize electricity costs for Maine consumers.

## § 2 POLICIES

In implementing this Chapter, the Commission shall be guided by the following statutory policies:

- 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;
- 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
- 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.

## § 3 DEFINITIONS

- A. **Capacity Resource.** "Capacity resource" means any renewable capacity resource, nonrenewable capacity resource or interruptible, demand response or energy efficiency capacity resource.
- B. **Commission.** "Commission" means the Maine Public Utilities Commission.
- C. **Contract for Differences.** "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.
- D. **FERC.** "FERC" means the Federal Energy Regulatory Commission.
- E. **Financial Transaction.** "Financial transaction" means a contractual arrangement between a program participant and a transmission and distribution utility in which money is exchanged among the contracting parties, rather than a physical delivery of the capacity, energy or renewable energy credit commodity, and which results in the same or similar financial consequences as a physical transaction.
- F. **GIS.** "GIS" means the NEPOOL Generation Information System or successor system.

- G. **GIS Certificates.** "GIS certificates" mean certificates created pursuant to the NEPOOL Generation Information System that represent attributes of electric power and that may be traded separately from the energy commodity.
- H. **Interruptible, demand response or energy efficiency capacity resource.** "Interruptible, demand response or energy efficiency capacity resource" means a resource that has demand response, interruptible or energy efficiency capacity recognized by the Commission.
- I. **ISO-NE.** "ISO-NE" means the Independent System Operator of the New England bulk power system or successor organization.
- J. **NERC.** "NERC" means the North American Electric Reliability Council or successor organization.
- K. **New.** "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.
- L. **NBSO.** "NBSO" means the New Brunswick System Operator or successor organization.
- M. **NMISA.** "NMISA" means the Northern Maine Independent System Administrator or successor organization.
- N. **Nonrenewable capacity resource.** "Nonrenewable capacity resource" means an electric generation resource other than a renewable capacity resource.
- O. **NPCC.** "NPCC" means the Northeast Power Coordinating Council or successor organization.
- P. **Renewable capacity resource.** "Renewable capacity resource" means a renewable resource, as defined in Maine Revised Statutes, Title 35-A, section 3210, subsection 2, paragraph C, except "renewable capacity resource" does not include:
1. a generator fueled by municipal solid waste in conjunction with recycling; or
  2. a hydroelectric generator unless it meets all state and federal fish passage requirements applicable to the generator.

- Q. **Renewable energy credit.** “Renewable energy credit” means a tradable instrument that represents an amount of electricity generated from resources that are eligible to satisfy the portfolio requirements in Maine or the other New England states. For purposes of this Chapter, renewable energy credit means either a GIS certificate, or a tradable instrument that represents the attributes of electric power generated in the region of the State administered by the NMISA that is authorized by the Commission through order.

#### § 4 CONTRACTING AUTHORITY

##### A. General Authority

When in the best interests of ratepayers, the Commission may direct investor-owned transmission and distribution utilities to enter into long-term contracts for:

1. Capacity resources;
2. Any available energy associated with capacity resources contracted for under this Chapter:
  - a. To the extent necessary to fulfill the policy specified in section 2(A) of this Chapter; or
  - b. 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
3. 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.

##### B. Contracting Limits

Capacity resources contracted for under this Chapter may not exceed the amount necessary to ensure the reliability of the electric grid of this State or to lower customer costs. Unless the Commission determines the public interest requires otherwise, a capacity resource may not be contracted for under this Chapter unless the Commission determines that the capacity resource is recognized as a capacity resource for purposes of any regional or federal capacity requirements.

##### C. Contract Type

A long-term contract authorized under this section may be for physical delivery of the products or may be a financial transaction. 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.

## § 5 COMPETITIVE SOLICITATION PROCESS

### A. Periodic Solicitations

The Commission shall periodically conduct a competitive solicitation process for capacity resources, available energy and renewable energy credits. The Commission shall solicit bids for capacity resources no less often than every three years, unless it determines that the likely benefits to ratepayers from any contracts that might result from the solicitation process will not exceed the likely costs.

### B. Requests for Proposals; Standard Form Contracts

The Commission shall solicit bids for capacity resources, available energy and renewable energy credits through the issuance of a request for proposals that contains standards, procedures and requirements for the bid solicitation process, and a description of any resource needs identified in the electric resource adequacy plan developed pursuant to section 9 of this Chapter. The request for proposals may contain a standard form contract. As part of the solicitation and selection process, the Commission may accept modifications to the standard form contracts. The request for proposals shall indicate that the proposals contain:

1. a description of the capacity resource and its resource priority category under subsection D(2);
2. a statement as to whether the resource is recognized as a capacity resource by the ISO-NE;
3. a statement of the projected value, if any, of energy production or reductions in energy associated capacity resources;
4. a demonstration that the proposed contract is within the contracting authority of section 4 of this Chapter;
5. a statement explaining the extent to which the proposed contract would promote the policies and objectives of this Chapter; and
6. the unit price and quantity bid for the capacity resource, any associated energy, and any renewable energy credits.

### C. Evaluation of Proposals and Bidder Negotiations

The Commission shall evaluate submitted proposals to determine compliance with the standards, procedures and requirements contained in the request for proposals. Following review of proposals, the Commission may engage in negotiations or discussions with bidders or a subset of bidders to clarify, refine or improve the proposals. When only one bid has been offered, the Commission shall ensure that negotiations are based on full project cost disclosure by the bidder. The Commission may accept one or more of the proposals or none of the proposals based on its assessment of whether proposals meet the

requirements of the request for proposals, satisfy the policies, objectives and selection criteria of this Chapter, and are within the contracting authority of this Chapter.

**D. Evaluation Criteria**

**1. Ratepayer Value**

The Commission shall consider and evaluate long-term contracts for capacity resources, any available energy, and any available renewable energy credits in terms of their potential to provide benefits to ratepayers. For purposes of this provision, long-term contracts that provide benefits to ratepayers may include, but are not limited to:

- a. Contracts that provide capacity, energy or renewable energy credits at costs that are reasonably likely to be below their market value;
- b. Contracts that are reasonably likely to reduce price volatility without increasing costs to ratepayers;
- c. Contracts that enable generation resources to be constructed or operated that offset or negate transmission-related costs in a cost-effective manner; and
- d. Contracts that enable generation resources to be constructed or operated that improve or maintain the reliability of the electric grid in Maine in a cost-effective manner.

**2. Resource Priority**

In the event the bid price of proposals are effectively the same, a limited amount of capacity resources is required, or the Commission exercises subjective judgment in evaluating the value or risk of non-price portions of proposals, the Commission shall give preference to capacity resources in the following order of priority:

- a. interruptible, demand response or energy efficiency capacity resources located in Maine;
- b. new renewable capacity resources located in Maine;
- c. new capacity resources with no net emission of greenhouse gases as determined in consultation with the Maine Department of Environmental Protection;
- d. new nonrenewable capacity resources located in Maine with preference given to new nonrenewable capacity resources with no net emission of greenhouse gases as determined in consultation with the Maine Department of Environmental Protection;
- e. capacity resources that enhance the reliability of the electric grid of this State with preference given to capacity resources with no net emission of

greenhouse gases as determined in consultation with the Maine Department of Environmental Protection; and

f. other capacity resources.

### 3. **Greenhouse Gas Reduction Policy**

The Commission shall ensure that any long-term contract authorized under this Chapter 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.

## E. **Energy Efficiency Programs**

### 1. **Long-Term Contracts**

If the Commission determines that the assessments on transmission and distribution utilities under Title 35-A, 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 Title 35-A, section 10104, subsection 4 or any annual update plan approved by the Commission pursuant to Title 35-A, 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 such 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:

- a. 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
- b. The Legislature specifically authorizes the contract or contracts; or allocates an amount of funds from the account established under Title 35-A, section 3210-C, subsection 12, 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.

### 2. **Process**

In the event that the Commission acts pursuant to this provision, it will solicit bids for energy efficiency capacity resources and any available energy associated with such resources through the issuance of a request for proposals that contains standards, procedures and requirements for the bid solicitation process and a description of the resource needs or the Commission will contract with the Efficiency Maine Trust, established pursuant to Title 35-A, section 10103, to deliver the energy efficiency capacity resources through a competitive solicitation process administered by the Efficiency Maine Trust.

**F. Customer Benefits****1. Financial Security**

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. The purpose of financial security is to protect ratepayers from economic losses arising from a seller's breach of a long-term contract. For purposes of this provision, adequate financial security includes, but is not limited to, an irrevocable letter of credit, a corporate guarantee from a credit-worthy corporate parent or affiliate, a security interest in the generation project or cash. In determining the adequacy of the financial security and the amounts required, the Commission may consider: the potential costs, benefits and risks of the long-term contracts for ratepayers; the amount of capacity, energy and renewable energy credits purchased under the long-term contract; industry standards for financial security; and the cost of the financial security to the seller. The Commission may waive the requirement for financial security for energy efficiency contracts entered into pursuant to subsection E if it finds that financial security is not necessary to protect the interests of ratepayers.

**2. Lower Cost Capacity and Energy Resources**

To the extent practicable, the Commission shall ensure that 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. For purposes of this provision, primary financing or subsequent replacement financing means the permanent financing arrangements that fund the development and construction of a generation project. The Commission may obtain this benefit for ratepayers through a contract term of sufficient length, contract renewal or extension options or any other reasonable commercial means.

**§ 6 CONTRACTING****A. Utilities**

The Commission may direct investor-owned transmission and distribution utilities to enter into long-term contracts as agents for their customers for capacity resources and any available energy associated with capacity resources contracted for under this Chapter. The investor-owned transmission and distribution utilities shall, at the Commission's request, assist in the negotiation of the terms of long-term contracts. The investor-owned transmission and distribution utilities shall be responsible for administering contracts entered into pursuant to this provision.

**B. Commission**

The Commission may enter into long-term contracts for interruptible, demand response or energy efficiency capacity resources.

**C. Contract Term**

A contract entered into pursuant to the Chapter may not be for more than ten years, unless the Commission finds that a contract for a longer term to be in the ratepayers' interest.

**D. Contract Payments**

Contracts for capacity, associated energy, and renewable energy credits entered into pursuant to this Chapter must provide that payments will be made only after contracted amounts of capacity, available energy, or renewable energy credits have been provided.

1. Contracts with the Efficiency Maine Trust established in Title 35-A, section 10103 for energy efficiency capacity resources and related energy entered into pursuant to this Chapter 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 Title 35-A, section 10105(5), that physical installations have been completed and contracted amounts of capacity resources and related energy have been substantiated.
2. Contracts with any entity other than the Efficiency Maine Trust established in Title 35-A, 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 Title 35-A, section 10105(5), that physical installations have been completed and contracted amounts of capacity resources and related energy have been substantiated.

**E. Commercial Reasonableness**

Contracts entered into pursuant to this Chapter shall be commercially reasonable and commit all parties to commercially reasonable behavior.

**§ 7 DISPOSITION OF RESOURCES**

At the direction of the Commission, investor-owned transmission and distribution utilities shall:

- A. dispose of capacity resources, available energy, and renewable energy credits through periodic competitive auctions supervised by the Commission;
- B. use capacity resources, available energy, and renewable energy credits to meet the supply requirements of Maine ratepayers; or

- C. take other action relative to capacity resources and available energy, and renewable energy credits as determined by Commission rule or order.

## § 8 COST RECOVERY

### A. Contract Costs

Investor-owned transmission and distribution utilities shall recover in rates through full reconciliation all costs paid for capacity resources, available energy, and renewable energy credits contracted for under this Chapter net of any value realized from the disposition of the resources pursuant to section 7 of this Chapter.

### B. Administration Costs

Investor-owned transmission and distribution utilities shall be allowed to defer and recover in rates all prudently incurred incremental costs associated with the administration of long-term contracts authorized pursuant to this Chapter.

### C. Capital Costs

Investor-owned transmission and distribution utilities shall recover in rates any impacts on their costs of capital that result from long-term contracts entered into pursuant to this Chapter.

## § 9 ELECTRIC RESOURCE ADEQUACY REPORT AND PLAN

### A. Report and Plan

The Commission may periodically prepare an Electric Resource Adequacy Report and Plan. The Commission shall prepare an Electric Resource Adequacy Report and Plan when it determines that such action would be necessary or useful in the solicitation and evaluation of long-term contracts under this Chapter. In the event that the Commission prepares an Electric Resource Adequacy Report and Plan, it shall submit the Report and Plan to the Joint Standing Committee on Utilities and Energy.

#### Contents

The Plan may include, but not be limited to, the following information:

1. an assessment of the adequacy of bulk level grid reliability;
2. the amount, type and preferred location of capacity resources and transmission development necessary to ensure adequate bulk level grid reliability, minimize the cost of federal capacity requirements, or lower the cost of electricity for Maine consumers;
3. the identification of capacity resources whose continued operation is necessary to ensure adequate grid reliability, minimize the cost of federal capacity requirements, or lower the cost of electricity for Maine consumers;

4. Commission action to facilitate the development or maintain the operation of capacity resources and transmission necessary to ensure adequate grid reliability, minimize the cost of federal capacity requirements, or lower the cost of electricity for Maine consumers; and
5. recommended legislation.

**B. Plan Development**

In developing the plan, the Commission may consider and, to the extent appropriate, incorporate the following:

1. existing forecasts of load and capacity requirement needs produced by the ISO-NE, the NMISA, the NBSO and other applicable entities;
2. forecasts by transmission and distribution utilities of peak demands and load growth; and
3. reports from transmission and distribution utilities on bulk level grid reliability within their service territories and the need for the development of new resources.

**C. Public Participation**

The Commission shall seek comment from interested persons in developing the Report and Plan.

**D. Plan Implementation**

The Commission shall implement the Plan by taking the following actions, as appropriate:

1. authorize long-term contracts for capacity resources pursuant to the provisions of this Chapter;
2. order transmission and distribution utilities to develop or facilitate the development of capacity resources or transmission;
3. participate in proceedings of other agencies as a resource for information on the need for capacity resources or transmission; and
4. advocate in the processes or proceedings of the FERC, ISO-NE, NEPOOL, NMISA, NBSO, NERC, NPCC or other entities that relate to or that may have an impact on grid reliability in Maine or the cost of federal capacity requirements for Maine consumers.

**E. Utility Reports**

In the event that the Commission decides to prepare an Electric Resource Adequacy report and Plan pursuant to the is Section, it may require investor-owned transmission and distribution utilities to file service territory bulk level grid reliability reports no less frequently than every two years. The grid reliability report may include an assessment of resource adequacy and grid reliability within the utility's service territory, an evaluation of whether the current system meets established grid reliability criteria or objectives, an analysis of whether established grid reliability criteria or objectives are likely to be met over the following five year period, and a discussion of the costs and benefits of viable alternatives to address any identified grid reliability need.

**§ 10 WAIVER OR EXEMPTION**

Upon request of any person subject to the provisions of this Chapter or upon its own motion, the Commission may, for good cause, waive any requirement of this Chapter that is not required by statute. The waiver may not be inconsistent with the purposes of this Chapter or Title 35-A. The Commission, the Director of Technical Analysis, or the presiding officer assigned to a proceeding related to this Chapter may grant the waiver.

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