

November 1, 2023

MAINE PUBLIC UTILITIES COMMISSION  
Amendments to Portfolio Requirement  
Rule  
(Chapter 311)

ORDER ADOPTING RULE  
AND STATEMENT OF  
FACTUAL AND POLICY  
BASIS

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BARTLETT, Chair; SCULLY and GILBERT, Commissioners

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## I. SUMMARY

Through this Order, the Commission adopts amendments to its Portfolio Requirement Rule (Chapter 311). This rulemaking implements the requirements of recently enacted legislation.

## II. BACKGROUND

### A. RPS Requirements

Section 3210 of Title 35-A directs the Commission to allow competitive electricity providers to satisfy the renewable portfolio requirements (RPS requirements) for Class I and Class IA resources through an alternative compliance payment. The Commission set the alternative compliance payment (ACP) rate in Chapter 311 of the Commission's rules. Chapter 311 currently does not have an ACP mechanism in place for Class II resources.

### B. Legislation

During the 2023 legislative session, the Legislature enacted L.D. 399, An Act to Amend the Portfolio Requirements for Class II resources and Require Money Collected from Alternative Compliance Payments to be Used for Financial Assistance (Act). P.L. 2023, c. 361. The Act makes changes to Maine's RPS requirements. Specifically, the Act allows competitive electricity providers to satisfy the portfolio requirements for Class II resources through an ACP mechanism. The Act directs the Commission to set the ACP rate by rule, at an amount not to exceed \$10 per MWh.

The Act also extends the time period for the 300% multiplier for the output of a generator fueled by municipal solid waste in conjunction with recycling that has obtained a solid waste facility license from the Department of Environmental Protection.

Finally, the Act directs the Commission to use ACPs for Class I, Class IA, and Class II resources to provide financial assistance for low-income households in

accordance with 35-A M.R.S. § 3214(2).

C. Inquiry (Docket No. 2023-00194)

On July 28, 2023, the Commission initiated an inquiry into Chapter 311. *Maine Public Utilities Commission Inquiry Regarding an Alternative Compliance Payment Rate for Class II Resources*, Docket No. 2023-00194 (July 28, 2023). The purpose of the Inquiry was to gather input from interested persons on the amount at which the Commission should set the ACP rate for Class II resources. Comments were filed by Maine Power LLC, the Office of the Public Advocate (OPA), Central Maine Power (CMP), C.N. Brown Electricity, LLC (C.N. Brown), Fox Island Electric Cooperative (FIEC), ecomaine, Great River Hydro, Maine Renewable Energy Association (MREA), and Brookfield Renewable Trading and Marketing (Brookfield). On August 18, 2023, the OPA and Maine Power LLC (Maine Power) filed reply comments.

### III. RULEMAKING PROCESS

On August 30, 2023, the Commission issued a Notice of Rulemaking (NOR) and proposed amendments to Chapter 311. Consistent with rulemaking procedures, the Commission provided interested persons with the opportunity to provide oral comments on the proposed rule during a public hearing held on September 27, 2023. The Commission also provided two opportunities to file written comments: once on September 22, 2023, and final comments on October 13, 2023.

The following interested persons provided comments on the proposed amendments to the rule: CMP, OPA, C.N. Brown, ecomaine, Brookfield, MREA, the Governor's Energy Office (GEO), Maine Power, Great River Hydro, Senator Nicole Grohoski, Representative Chris Kessler, and Representative Sophie Warren of the Legislature's Energy, Utilities, and Technology Committee (September EUT Legislators), FIEC, Representative Stanley Paige Zeigler Jr, Representative James A. Boyle, Representative Valli D. Geiger, and Representative Walter Gerard Runte Jr (October EUT Legislators).

### IV. AMENDED RULE PROVISIONS

A. ACP Class II Amount

The Act directs the Commission to take into account four separate factors when setting the alternative compliance payment rate. Specifically, The Act directs the Commission to take into account "prevailing market prices, standard-offer service prices for electricity, reliance on alternative compliance payments to meet the requirements of Subsection 3 of 35-A M.R.S § 3210, and investment in Class II resources in the State during the previous calendar year." 35-A M.R.S. § 3210(9)(A). Section 3210(3) of Title 35-A describes the requirement for a competitive electricity provider to demonstrate to the Commission that no less than 30% of its portfolio of supply sources for retail

electricity sales in the State is accounted for by Class II resources. The Act set the maximum payment for the ACP at \$10 per MWh.

In responses to the Notice of Inquiry, commenters generally advocated for two different positions. Several commenters (Maine Power, C.N. Brown, and FIEC) argued that the Commission should look at historical prices and set the payment at a lower amount that represents an average historical price for the ACP. These commenters suggested values between \$1 and \$2. These commenters also argued that the lower value would protect Maine ratepayers.

Other commenters (ecomaine, Great River Hydro, MREA, and Brookfield) suggested the Commission should set the price at the statutory cap to reflect rates in neighboring states and to reflect more recent prices for Class II RECs. These commenters argued that a lower value would harm Maine's Class II resources.

CMP did not suggest a specific amount, but instead suggested establishing a rate that reflects the value of Class II RECs in the marketplace. The OPA suggested an amount of \$7 to balance the interests raised by the commenters.

In the proposed rule the Commission set the value at \$5 to balance historic and recent pricing trends and also to reflect the importance of cost containment that the Legislature signaled when the Legislature adopted the Act.

In their initial comments, commenters generally advocated that the Commission set the value higher than \$5 or lower than \$5. Brookfield, ecomaine, MREA and Great River Hydro all stated that the value should meet the legislative cap of \$10.00 to reflect legislative intent, prevailing market prices, and reflect prices in other states. C.N. Brown, FIEC, and Maine Power advocated for a value lower than \$5. These commenters pointed to the effects of a higher cap on ratepayers. Maine Power stated that the Class II market was not a truly competitive market because there was no opportunity to increase supply to match demand. The September EUT Legislators supported a value of \$2. They cited concerns for ratepayers, historical market prices, current prices below \$5, the fact that Class II resources historically did not need prices above \$0.50 to continue operation, and the fact that investment will not result in increased availability of Class II resources.

The OPA generally supported the proposed value of \$5. The OPA suggested an annual proceeding to re-evaluate the value to see the effect of the cap on ratepayers and market participants. Neither CMP nor the GEO proposed a value, but both recognized the need to keep Class II resources available. CMP also noted that the Class II ACP value needed to be balanced with interests of ratepayers, energy efficiency, renewables, and funding for low-income households. The GEO focused on achieving Maine's Class II renewable and efficient resource standard and stated that larger RPS policy factors may need to be addressed by the Legislature. Both the OPA and the GEO proposed that the Commission may revisit the value the Commission sets in later proceedings.

Parties generally maintained their positions in their final comments. CMP and the GEO both refrained from suggesting a proposed value and instead urged the Commission to set the ACP at a regionally competitive rate. The GEO focused in its comments on the statutory requirement that the rate be sufficient to help the state achieve the state's RPS goals. The October EUT Legislators also submitted comments supporting a rate higher than \$5 to help the state achieve the state's RPS goals.

In setting the rate in the amended rule, the Commission considers each of the factors in the Act in turn.

#### 1. Prevailing Market Prices

The Act directs the Commission to consider prevailing market prices as one factor when setting the ACP Class II Rate. This presents the Commission with two difficult tasks: first, determining what composes the market for ME Class II resources, and second, determining what the prevailing prices are for that market.

In their comments the Class II generators urge the Commission to consider regional markets when determining what composes the Maine Class II market. Brookfield September 22 Comments at 2; Great River Hydro September 22 Comments at 3; ecomaine September 22 Comments at 5.

"While each New England state has its individual renewable portfolio requirements, the markets created by these requirements are interdependent due to overlapping eligibility criteria." Sustainable Energy Advantage Powerpoint prepared for MREA at 2. "Each state's RPS is not homogenous, differing by targets, eligibility criteria, vintage, ACP levels." *Id.* at 5. "By definition, the fleet of qualified Class II resources, pre-existing renewable or efficient resources – is limited, and therefore a higher REC price cannot lead to new market entrants or a greater supply of Class II renewable energy certificates." GEO September 22 Comments at 3.

The Commission finds that, while prices of similarly situated resources outside of the state can help inform the ACP Class II Rate, it is not reasonable to directly compare Maine Class II Resource prices to prices set in states for categories that include some resources that are not included with Maine Class II resources, and that do not include some resources that make up the Maine Class II category. For example, the Vermont market includes large Canadian hydro resources and the Rhode Island category, while similarly only including existing resources, does not include Waste to Energy or Combined Heat and Power resources. Sustainable Energy Advantage Powerpoint prepared for MREA at 5, 8. Further, "12% of supply eligible for ME Class II is only eligible in Maine." *Id.* at 10. While the Commission acknowledges that there is overlap between the Maine Class II market and other regional markets, no two markets are identical.

Because the Maine Class II RPS Market is distinct from those in other states, the Commission declines to set the ACP rate for Maine Class II markets solely based on the ACP rates in other states. Further, the Commission notes that the Maine Class II market historically operated at lower value than that of other regional markets even before the recent price spike. The Commission finds it informative, but not binding, to use other state's values when determining the ACP rate in accordance with the Act.

The Class II generators similarly urge the Commission to consider only current market prices when determining prevailing market prices for the Class II ACP rate. Brookfield September 22 Comments at 2, 12; ecomaine September 22 Comments at 5. Other entities urge the Commission to consider historical prices. OPA September 22 Comments at 2; C.N. Brown September 22 Comments at 2; FIEC October 13 Comments. They argue that "prevailing market prices" refers to current market prices, going back not further than a year, and not to historical market prices.

The value of Maine Class II RECs is currently closer to \$4. In response to the recent spike in prices "the market has functioned accordingly, with the supply responding and the price coming back down to near historic averages." Great River Hydro September 22 Comments at 3 (in comments advocating for an ACP rate of \$10). Other resources indicate that the value for ME Class II RECs is trending closer to \$4. Sustainable Energy Advantage Powerpoint prepared for MREA at 15; September EUT Legislators Comments at 2; data provided by S&P Global Market Intelligence.

Sustainable Energy Advantage argues that the most current prices are in response to policy signals from the Maine Legislature, and not indicative of an efficient market. Other commenters argue that, because there is no way to add to the supply of Class II resources, the market for Class II resources cannot function as an efficient market. OPA September 22 Comments at 4; GEO September 22 Comments at 3; Maine Power September 22 Comments at 4.

The Commission agrees that, because it is impossible to add to the supply of Class II resources, it would not be appropriate to treat the Maine Class II RPS Market as an efficient market that can increase supply in response to increased prices. The Commission also acknowledges that increased demand from rising electric load has led Maine Class II resources to charge higher prices that may not correlate to increased operating costs. Continuing population growth and electrification can only exacerbate the imbalance between the growing demand and upwardly fixed supply of Maine Class II RECs further increasing the potential inefficiency of market determined prices. Therefore, the Commission finds it useful to look at the current prices for Maine Class II resources when examining prevailing prices for the Maine Class II REC market.

The Commission finds that the historical price for Maine Class II resources, in addition to the current market price for Maine Class II RECs supports the ACP rate of \$5 as set forth in the proposed amendment to the rule.

## 2. Standard-Offer Service Prices for Electricity

The Act directs the Commission to consider standard-offer service prices for electricity when setting the ACP rate for Class II resources.

The Class II generators mostly refrained from commenting on the impact of an ACP rate on standard-offer service prices for electricity. Brookfield cautioned “against setting ACP rates on factors other than the prior year REC market, for example, by focusing primarily on the cost impact on Maine consumers.” Brookfield September 22 Comments at 11.

The commenters that did comment directly on standard-offer service prices for electricity all observed that a higher ACP rate would directly increase the price of electricity provided through standard offer service prices. “A Class II ACP rate of \$10 will increase the burden of the already high cost of electricity that Maine’s ratepayers and our customers must face.” C.N. Brown September 22 Comments at 2. C.N. Brown goes on to say, “at a \$2 ACP, this will cost Maine ratepayers approximately \$7.2 million annually or nearly \$195 million through 2050, assuming 3.6 million Class II RECs are needed for RPS compliance. At a \$10 ACP, this will cost Maine ratepayers approximately \$36 million annually or \$972 million through 2050.” C.N. Brown September 22 Comments.

Commenters also observed that the proposed price of \$5 would “result in a cost to consumers of almost ten times [the] historical average cost.” Maine Power September 23 Comments at 3. The September EUT Legislators expressed concern about the financial impact on Maine Ratepayers of the recent spike in prices for Class II REC. September EUT Legislators Comments at 1.

The Commission finds that a lower ACP rate would directly result in lower maximum costs to Maine ratepayers. The lower the ACP rate, the lower the potential costs to Maine ratepayers. The amended rule attempts to balance this finding with the other listed factors in the Act.

## 3. Reliance on Alternative Compliance Payments to Meet the Statutory Portfolio Requirements

The Act requires the Commission to consider reliance on alternative compliance payments to meet the statutory portfolio requirements. In consideration of this factor, the Commission considers the impact of the ACP on the ability of Class II resources to continue to operate, and on Maine electricity suppliers purchasing RECs instead of paying the ACP.

Commenters generally agreed that it was important to keep existing Class II resources online. October EUT Legislators Comments at 2; GEO October 13 Comments at 2-3; OPA September 22 Comments at 4.

The Commission agrees with the comments made by the GEO, that “the alternative compliance payment rates should be sufficient to enable generators supplying Class II RECs to continue to operate, as well as to provide RECs for sale to electricity suppliers complying with Maine’s Class II requirement.” GEO September 22 Comments at 2. The Commission recognizes that “12% of supply eligible for ME Class II is only eligible in Maine.” Sustainable Energy Advantage Powerpoint prepared for MREA at 10. That means that 88% of Class II resources could be eligible to sell their RECs out of the state.

Commenters disagreed on the impact of the ACP rate on the reliance of competitive electricity providers on the ACP rate to meet the statutory portfolio requirements. Class II generators commented that setting the cap below the \$10 maximum set in the legislation would lead to generators selling their resources out of state. Brookfield September 22 Comments at 2; MREA September 22 Comments at 1; ecomaine September 22 Comments at 4. Other commenters similarly expressed a concern on Maine’s ability to meet its renewable power policy goals with the cap in the proposed rule. GEO September 22 Comments at 2; October EUT Legislators Comments at 2.

Maine Power argued that because the market is not competitive, the ACP rate is not a good way to tell the level of REC revenue necessary to preserve Maine’s Class II renewable resources. Maine Power September 22 Comments at 4. Other Commenters observed that the high prices benefit Class II generators who do not need the additional income to continue to operate and provide renewable energy. September EUT Legislators Comments at 2; C.N. Brown September 22 Comments at 2; FIEC Comments.

The Commission notes that, should the Commission adopt the statutory cap, the Class II market in Maine would still be tied for the lowest prices compared to other markets in the region. “Setting the ACP at \$10 would already be below-market.” ecomaine September 22 comments at 5. Given that the statute does not allow the Commission to set a price that is higher than the ACP rate of some similar resources in other states, the Commission does not find persuasive the arguments that the Commission should set the price as high as the cap to prevent Class II resources from selling their RECs outside of the state. To the contrary, even if the Commission were to set the ACP rate at the maximum of \$10, the higher prices in other states could still attract Class II generators seeking maximum value for their RECs.

Given Class II resources’ ability to operate at historical rates for the past two decades, and given that the amended rule’s rate of \$5 is a significant increase over the historical rate, the Commission finds that the amended rule should provide Class II resources with enough revenue to continue to operate. Further, a majority of Class II resources have the opportunity to sell their RECs outside of the state if they find it necessary to increase their income. The Commission declines to set the ACP Class II rate at the maximum merely to be closer to the limit set in other states. The Commission may not set Maine’s Class II ACP rate at a level that exceeds the ACP rate or market

determined rate of other states. Even at the statutory maximum, Maine Class-II eligible resources would still have incentive to sell their RECs outside of Maine.

4. Investment in Class II Resources in the State During the Previous Calendar Year

Finally, the Act directs the Commission to consider investment in Class II resources in the state during the previous calendar year. While the Commission specifically raised this question in the Notice initiating the rulemaking, most commenters remained silent on what, if any, investments they had made in the previous year in response to the recent price spike for Class II resources.

One Class II generator stated that, while Maine Class II REC revenues factor into the decision-making process when determining viability of Class II generators, it reminded the Commission that the Commission should consider future investment decisions and options, not just those made within the past few years. Brookfield September 22 Comments at 10, 15. Similarly, instead of focusing on the past year's investment, Great River Hydro said it was best to look at a market-based approach to providing investment incentives. Great River Hydro September 22 Comments at 2. Finally, ecomaine mentioned that it "was selling Class II RECs at a fixed price that was well below the market price for RECs." ecomaine September 22 Comments at 7.

However, the Class II generators that did comment observed that they may face increased expenses in the future in response to federal or operating requirements, and that an ACP rate below \$10 could discourage them from investing in their resources. MREA October 13 Comments at 2; Brookfield September 22 Comments at 15, ecomaine September 22 Comments at 7; Great River Hydro September 22 Comments at 2.

The Commission did not receive any comments stating specifically how Class II generators had taken advantage of the increased market prices for Class II RECs to invest in their facilities in the past year. Other commenters observed that, because you cannot add to Class II resources, "Class II RECs do not compensate new renewable energy investments." September EUT Legislators Comments at 2.

Because the Commission did not receive any comments citing the importance of a high price for RECs in the making of the previous year's investment decisions, the Commission does not have direct information about how a high ACP rate will impact near-term investments in Class II resources. It is the Commission's view that the amended rule's \$5 cap that greatly exceeds historical returns on RECs should help accommodate future investment decisions of Class II Resources.

5. Opportunity to Reconsider

Multiple commenters suggested it would be important for the Commission to be able to reconsider the ACP rate if the ACP rate does not meet the Act's objectives. OPA



September 22 Comments at 2-3; OPA October 13 Comments at 3; GEO October 13 Comments at 3; Brookfield September 22 Comments at 9.

The Commission agrees with these commenters that it is important to be able to re-examine the ACP rate to ensure it meets the goals of the Act. For this reason, the amended rule contains new language that allows the Commission to re-examine the ACP rate if necessary.

#### 6. Further Considerations

In addition to the four factors required for consideration in statute, several commenters urged the Commission to consider the fact that the Legislature did not pass legislation that set the cap at \$5/MWh (ecomaine comments at 3, Brookfield September 22 Comments at 6, and October EUT Legislators Comments at 2). The Act directs the Commission to consider four specific factors to consider when setting the rate, which it has done in this Order. The Commission refrains from considering other factors not specified in the Act.

#### B. Fund for Deposit of Payments

The Act also requires the Commission to use ACP funds to provide financial assistance to low-income households. To comply with this provision of the Act, the proposed rule directed the use of ACP funds to provide financial assistance to low-income households. The Commission did not receive any comments on this proposal. The amended rule adopts the language in the proposed rule.

#### C. Multiplier Extension

Finally, in compliance with the Act, the proposed rule adjusted the dates during which a 300% multiplier is applied to the output of a generator fueled by municipal solid waste in conjunction with recycling that has obtained a solid waste facility license from the Maine Department of Environmental Protection. The Commission did not receive any comments on this proposal. The amended rule adopts the language in the proposed rule.

### V. ORDERING PARAGRAPHS

Accordingly, the Commission

#### ORDERS

1. That the amendments to Chapter 311, Portfolio Requirement, as described in the body of this Order and as set forth in the attached amended rule are hereby adopted;



**DISSENT OF COMMISSIONER SCULLY**

I respectfully dissent. I would set the ACP for Maine's Class II RPS requirement at a value lower than \$5/MWh, for several reasons. In general, I conclude that the Class II RPS requirement fails its legislative purpose, does not serve to promote the development of new renewable generation, has not been meaningful in or necessary to preserving the availability of existing renewable generation, and that RECs from existing Maine renewable generation will increasingly be used to serve the RPS requirements of other New England states with higher ACPs and REC prices. The only certain impact of setting this ACP at any level below the \$10 cap is the impact on ratepayers. That impact is not insignificant and therefore should be our primary concern.

It is important to consider the purposes of Class II RPS in Maine law and the effect different levels of ACP will have on achieving those purposes. The Class II 30% RPS was created in 1997 as part of Maine's Electric Industry Restructuring Act. It followed a comprehensive report and plan prepared by this Commission and submitted to the Legislature in 1996 in response to a legislative resolve. The Commission explained its recommendation for an RPS:

All companies selling electric power in Maine should meet part of their customers' needs with renewable power. Companies could meet this renewable portfolio standard in several ways. ... Companies with entitlements to renewable generation could compete to provide credits, and all power suppliers could try to minimize the cost of meeting the standard. If renewable generation becomes competitive with fossil-fuel generation, the value and the cost of the credits would decrease. Ultimately, the requirement could be eliminated as the cost of providing power using renewable resources approaches the cost of other production methods.

*Maine Public Utilities Commission Electric Utility Industry Restructuring Report and Recommend Plan*, Docket 95-462 (December 31, 1996) at 85. The Commission concluded that an RPS was required to promote the development of renewable resources in Maine that might not occur in a purely competitive environment. Clearly the Commission felt that an RPS would be temporary until such time as renewable generation was cost competitive with fossil fuel generation.

The 1997 Restructuring Act required that at least 30% of all suppliers' portfolios of supply sources for retail sales in Maine constitute renewable or efficient resources, defined to include small power producers, efficient cogeneration facilities, including those fueled by fossil fuels, fuel cells, as well as generators fueled by tidal, solar, wind, geothermal, hydroelectric, biomass and municipal solid waste. In fact, at the time the RPS requirement was created in 1997, Maine had well more than sufficient renewable resources to meet the 30% target, and subsequent events suggest that, while the Class II RPS may have provided very limited additional revenues to existing resources, by itself it did nothing to trigger investment in new renewable resources.

Thus, the Class II RPS was originally conceived as a temporary mechanism to

promote the development of renewable resources, but it was set so low that it failed that purpose. Further, renewable resources are now very competitive with fossil fuel resources on a cost basis. In addition, given climate policies in Maine and New England in 2023, it is very unlikely that new fossil fired generation will be built in Maine or the region at any time in the foreseeable future, if ever. On the contrary, many less efficient fossil fuel generators have retired, or will retire in the near future. Maine's Class II RPS is no longer necessary to allow renewable generation to be competitive. While this suggests that the Legislature should consider changing or eliminating the Class II RPS, a policy consideration that is not before us, it also provides relevant considerations for the Commission as we determine an appropriate ACP to be in place until the Legislature takes up the larger policy question.

Maine has been successful in the development of new renewable resources in our state over the past 20 years, but not due to the Class II RPS. New England's electricity markets have also failed to support the financing and construction of new renewables, in part due to a pricing structure built for high variable cost, and low fixed cost generation, such as CCNG units. Most renewable projects have relatively high fixed costs and very low operating costs. As neither the state's RPS requirement or the regional energy markets have supported new renewable development, the Legislature intervened and authorized the Commission to procure wind and solar projects through long-term contracts. The history of renewable procurement in Maine suggests that REC revenue has not been a meaningful factor in the successful development and financing of these projects.

Vintage renewable projects like Maine's many hydroelectric facilities, have operated successfully over the past 23 years with very little Class II REC revenue. These facilities, with very low operating costs, typically receive both capacity payments and energy payments, with energy LMPs driven by the cost of natural gas. That revenue stream has been sufficient historically to allow Maine's class II resources to remain on-line and to make necessary repairs, maintenance, and capital investments. To the extent such facilities need major capital investments, they would likely qualify as "refurbished," thus making them qualify as new renewable resources eligible for Class I REC revenues.

We asked questions in this rulemaking of existing renewable project owners to better understand the extent to which Class II REC revenues are essential to their continued operation. We received very little in response to our requests. Given the record in this case, and Maine's history of successful operation of Class II resources with very low Class II REC prices, I can only conclude that such revenues are not essential to the continued availability of these resources and that market energy and capacity revenues have been sufficient to allow these resources to continue to operate. Given this, and given the higher ACPs available in the other New England states, I do not believe that a Maine Class II ACP that is closer to the historic Class II REC value will adversely affect Maine's Class II resources. Further, at any ACP level below \$10/MWh, Maine's ACP will be the lowest in New England. Most of Maine Class II resources will be able to sell their RECs into other states and achieve higher REC

prices.

It has been suggested that the ACP we set should reflect the market price for Class II RECs in Maine and New England. However, I conclude that there is no real market at work here. In a real market, supply and demand would act to result in a market price. But for Class II resources, there is only a fixed supply of eligible resources because only resources built prior to 2005 participate. All more recently constructed renewable resources would qualify as Class I or IA. Further, the existing stock of eligible resources is going down over time as projects either retire or they are refurbished through some meaningful capital investment and thus become eligible for Class I. There is no way for the supply of Class II resources to increase in response to increasing demand, and in fact the supply is declining over time. There are also a limited number of suppliers and there is some opportunity to manipulate the market to affect prices, although we have not explored in this docket whether that is happening.

Demand is not set by consumers but is set administratively by the Legislatures of the New England states with no price sensitivity except the price cap that is the ACP. This administrative demand is clearly increasing as states outside Maine have created increasing RPS requirements for which Maine's Class II resources are eligible. In addition, some institutional customers are also seeking to buy Class II RECs to meet their organizational goals regarding renewable energy. And with electrification occurring in Maine's and New England's heating, cooling and transportation sectors, overall load is also increasing, requiring more generation from the fixed number of Class II resources to meet Maine's 30% requirement and the requirements of other New England states.

For all of these reasons, we do not have anything that approaches a real market, and thus using the language of markets to describe what we've been asked to do is misleading at best.

For the first 23 years of Maine's Class II RPS, from 1997 until 2020, Class II REC prices were quite low, averaging between \$0.15 and \$1.31 per MWh. This was presumably a consequence of the oversupply of eligible resources in Maine and New England to meet Maine's 30% requirement and the then applicable requirements of other New England states. This changed in 2020 and 2021, when Class II REC prices spiked dramatically to as high as \$15/MWh before falling back to approximately \$4/MWh. While we don't know for certain what caused the spike, it clearly was at least in part due to the increasing demand from other New England states and institutional consumers for existing renewable resources, especially hydroelectric power.

In summary, I conclude that Maine's Class II RPS does not function to incent the development of new renewable generation in Maine, has not been and is not likely now a meaningful or necessary source of revenue for existing Maine Class II resources, and that most of Maine's Class II resources have access to higher REC revenues in other states.

To be clear, I fully support Maine's climate policy and historic support for renewable power. I hope that Maine will continue to adopt policies, and that New England will adopt market structures, that promote the retention of existing renewable resources and the cost-effective development of new renewable resources as needed to meet growing load. But Maine's existing Class II RPS is not an effective tool to achieve these important goals.

Despite some uncertainties we face in this matter, what we know for certain is that a higher ACP will result in higher costs to Maine ratepayers. Given that the legislative purpose of the Class II RPS will not be served no matter at what level we set the ACP, our principal concern should be the impact on our ratepayers. There we can make a difference. And for that reason, I would set the ACP at \$2/MWh.

## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S. § 9061 requires the Public Utilities Commission to give each party at the conclusion of an adjudicatory proceeding written notice of the party's rights to seek review of or to appeal the Commission's decision. The methods of review or appeal of Commission decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 11(D) of the Commission's Rules of Practice and Procedure (65-407 C.M.R.ch. 110) within **20** days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought. Any petition not granted within **20** days from the date of filing is denied.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21** days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.