STATE OF MAINE
PUBLIC UTILITIES COMMISSION

COVANTA ENERGY
Request for Certification for RPS Eligibility

ORDER GRANTING NEW RENEWABLE RESOURCE CERTIFICATION

VANNOY, Chairman; McLEAN and WILLIAMSON, Commissioners

I. SUMMARY

Pursuant to this Order, The Covanta Energy biomass facility in West Enfield, Maine is certified as a Class I New Renewable Resource that is eligible to satisfy Maine’s new renewable resource portfolio requirement pursuant to Chapter 311, § 3(B) of the Commission’s rules.

II. BACKGROUND

A. New Renewable Resource Portfolio Requirement

During its 2007 session, the Legislature enacted an Act To Stimulate Demand for Renewable Energy (Act). P.L. 2007, ch. 403 (codified at 35-A M.R.S.A. § 3210(3-A)). The Act added a mandate that specified percentages of electricity that supply Maine’s consumers come from “new” renewable resources. Generally, new renewable resources are renewable facilities that have an in-service date, resumed operation or were refurbished after September 1, 2005. The percentage requirement starts at one percent in 2008 and increases in annual one percent increments to ten percent in 2017, unless the Commission suspends the requirement pursuant to the provisions of the Act.

As required by the Act, the Commission modified its portfolio requirement rule (Chapter 311) to implement the “new” renewable resource requirement. Order Adopting Rule and Statement of Factual and Policy Basis, Docket No. 2007-391 (Oct. 22, 2007). The implementing rules designated the “new” renewable resource

1 Maine’s electric restructuring law, which became effective in March 2000, contained a portfolio requirement that mandated that at least 30% of the electricity to supply retail customers in the State come from eligible resources, which are either renewable or efficient resources. 35-A M.R.S.A. § 3210(3). The Act did not modify this 30% requirement.
requirement as “Class I” and incorporated the resource type, capacity limit, and the vintage requirements as specified in the Act. The rules thus state that a new renewable resource used to satisfy the Class I portfolio requirement must be of the following types:

- fuel cells;
- tidal power;
- solar arrays and installations;
- wind power installations;
- geothermal installations;
- hydroelectric generators that meet all state and federal fish passage requirement; or
- biomass generators, including generators fueled by landfill gas.

In addition, except for wind power installations, the generating resource must not have a nameplate capacity that exceeds 100 MW. Finally, the resource must satisfy one of four vintage requirements. These are:

1) renewable capacity with an in-service date after September 1, 2005;
2) renewable capacity that has been added to an existing facility after September 1, 2005;
3) renewable capacity that has not operated for two years or was not recognized as a capacity resource by the ISO-NE or the NMISA and has resumed operation or has been recognized by the ISO-NE or NMISA after September 1, 2005; or
4) renewable capacity that has been refurbished after September 1, 2005 and is operating beyond its useful life or employing an alternate technology that significantly increases the efficiency of the generation process.

Chapter 311, § 3(B)(4) of the Commission’s rules establishes a certification process that requires generators to pre-certify facilities as a new renewable resource under the requirements of the rule and provides for a Commission determination of resource eligibility on a case-by-case basis. The rule contains the information that must be included in a petition for certification and specifies that the Commission shall provide an opportunity for public comment if a petitioner seeks

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2 The “new” renewable resource requirement was designated as Class I because the requirement is similar to portfolio requirements in other New England states that are referred to as “Class I.” Maine’s pre-existing “eligible” resource portfolio requirement is designated as Class II.

3 In the Order Adopting Rule at 6, the Commission noted that a request for certification can be made at any time so that a ruling can be obtained before a capital investment is made in a generation facility.
certification under vintage categories 2, 3, or 4. Finally, the rule specifies that the Commission may revoke a certification if there is a material change in circumstance that renders the generation facility ineligible as a new renewable resource.

B. Petitions for Certification

On June 9, 2010, Covanta Maine LLC (Covanta), a subsidiary of Covanta Energy, filed a petition to certify its biomass facility located in West Enfield, Maine (Facility) as a Class I renewable resource. The facility is a 27.2 MW circulating fluidized bed plant combusting wood chips, bark, tree limbs and tops, mill residue, and other forest-related biomass, and was commissioned in 1987. Covanta sought Class I certification under Section 3(B)(3)(d), the refurbishment vintage category, of Chapter 311 of the Commission rules. In response to a June 30, 2010 request by Staff for additional information, Covanta provided, on July 2, 2010, a detailed list of the major refurbishment projects. On October 18, 2010, again at the request of Staff, Covanta also provided information regarding the accounting treatment of the listed projects.

On November 12, 2010, the Commission issued an Order denying Class I certification on the premise that while the Facility was operating beyond its previous useful life, it had not been refurbished. The Commission noted that the level of refurbishment investment relative to the overall value of the facility was below 20%. Covanta appealed the Commission decision to the Maine Supreme Judicial Court.

On June 5, 2012, the Maine Supreme Judicial Court issued its decision in the case Covanta Maine, LLC v. Public Utilities Commission, 2012 ME 74. The Court remanded the case, stating that the Commission improperly denied certification, as the “statute does not require any minimum investment threshold, and imposing this requirement on Covanta was an error of law.” Covanta Maine, 2012 ME 74, ¶ 16. The Court stated that the Commission must “make this determination by examining the nature and character of the expenditures without any quantitative requirement related to the amount spent or the ratio of the expenditures to the total value of the facility” id. at ¶ 17 and must “evaluate the expenditures to determine whether they were made for the purpose of repair or maintenance or for investment in equipment of facilities” id. at ¶19.

On August 14, 2012, Covanta filed an Amended Petition for consideration with the Commission. The Amended Petition stated that the original facility had many design flaws that had been rectified and improved. Between September 1, 2005 and the date of the Amended Petition, Covanta asserted that it expended approximately $4 million to implement major U-beam design changes and refurbishment; a material upgrade and modernization of the multi-cyclone system; a redesign of the ash system; a total refurbishment or replacement of the bed letdown screws; and a substantial upgrading of the Facility’s electrical system, including the battery system charger, UPS, DC/AC variable speed drives, programmable logic controllers, and motor protectors.

In an Order issued on June 17, 2013 (2013 Order), the Commission again denied Class I certification for the Facility because Covanta had not demonstrated
refurbishment in accordance with Chapter 311 and Covanta Maine. In that Order, the Commission determined that the tax treatment of Covanta’s claimed $4 million of expenses was more indicative of maintenance or repair than refurbishment. Further, while the U-beam projects were capitalized for federal tax purposes, those projects had become routine due to a design flaw of the Facility and could not be considered refurbishments in this context. Finally, the remaining capitalized expenditure, the boiler bed letdown screw replacement, was by itself de minimis and not sufficient to be considered a refurbishment of the Facility. Therefore, although the Commission found that the Facility was operating beyond its useful life, as it had in 2010, Covanta had not demonstrated refurbishment as required for certification under Chapter 311.

On March 16, 2016, Covanta submitted a third petition requesting certification of the Facility as a Maine Class I Renewable Resource (2016 Petition). As it had in its previous two petitions, Covanta sought certification under Section 3(B)(3)(d), the refurbishment vintage category, of Chapter 311 of the Commission rules. However, the 2016 Petition differed in that it appears to claim that the Facility is employing an alternate technology that significantly increases the efficiency of the generation process, rather than operating beyond its previous useful life. In addition, Covanta’s 2016 Petition claimed several new refurbishment investments, including “controls upgrade” and “transmission line upgrade”. Staff issued information requests on April 11 and May 16, 2016, seeking, in part, additional investments made in the Facility since 2011 that were capitalized for Federal tax purposes. In response, Covanta provided two separate lists. The first identified potential refurbishment projects and the costs associated with each project. The second identified the amount capitalized for federal tax purposes relative to Facility component as follows: [Redacted] The sum of these capital expenditures equals $1,644,751.91.

The Commission provided interested persons with an opportunity to comment on Covanta’s 2016 Petition. The Commission received no comments.

III. DECISION

After considering Covanta’s 2016 Petition and the additional information provided by Covanta in response to Staff’s questions, the Commission finds that Covanta’s West Enfield Facility has been refurbished and is operating beyond its useful life pursuant requirements of Chapter 311, § 3(B)(3)(d), and therefore qualifies as a Maine Class I New Renewable Resource. The Facility is a biomass generator with a nameplate capacity less than 100 MW. The remaining requirements for certification under the refurbishment vintage prong are discussed below.

A. Vintage

Just as in 2010 and 2012, Covanta seeks certification in its 2016 Petition under the refurbishment prong of the vintage criteria contained in Chapter 311, §
3(B)(3)(d). This refurbishment prong is also contained in the definition of “New” as applied to any renewable capacity resource in 35-A, MRSA § 3210(2)(B-4). The refurbishment prong defines a new renewable resource as a generation facility that:

has been 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.

This prong is a two part test that requires the Commission to first determine whether the facility has been “refurbished,” and then to determine whether the facility is either operating beyond its previous useful life or employing an alternate technology that significantly increases the efficiency of the generation process.

B.  Refurbishment

To clarify the meaning of refurbishment, the Legislature enacted an amendment to the refurbishment prong of the vintage requirement. Pursuant to the statutory amendment, “to refurbish” means “to make an investment in equipment or facilities, other than for routine maintenance and repair, to renovate, reequip or restore the renewable capacity resource.” 35-A M.R.S. § 3210(2)(B-4).

As stated by the Maine Law Court, the purpose of the refurbishment provision is to encourage the preservation of older existing renewable generation facilities by creating an incentive for owners to make the investments necessary to preserve and extend the useful lives of these older facilities. Covanta Maine, LLC v. Pub. Utils. Comm’n, 2012 ME 74, ¶ 16. 44 A.3d 960, 964-65.

Pursuant to the Law Court’s analysis in Covanta Maine, in the course of making its determination regarding whether there has been a refurbishment, the Commission must consider the nature and character of the expenditures to determine whether they were made for the purpose of repair or maintenance or for investment in equipment or facilities. Covanta Maine, 2012 ME 74, ¶¶ 17, 19, 44 A.3d at 365.

The Commission’s practice in assessing whether a generation facility has been refurbished is to examine a variety of factors, including, but not limited to, the condition of the facility prior to the investments and the nature of the expenditures to determine whether they appear to be related to routine maintenance and repair. While the Law Court found in the Covanta Maine that the Commission must make a determination on refurbishment “by examining the nature and character of the

4 The Commission interprets this language as making “explicit the Commission’s existing practice of disregarding investments made for routine maintenance and repair when looking at whether a facility has been refurbished.” Verso Bucksport LLC Request for Certification for RPS Eligibility, Docket No. 2011-102, Order Granting New Renewable Resource Certification at 7, fn. 10 (Nov. 23, 2011).
expenditures without any quantitative requirement related to the amount spent or the ratio of the expenditures to the total value of the facility,” id. at ¶ 17, the Commission still reviews the magnitude of post-September 1, 2005 expenditures as part of its determination regarding the character of the investment and whether the investment is more in the nature of routine maintenance and repair or refurbishment.

The Law Court noted that while tax accounting treatment “is not dispositive in deciding whether an expenditure is a repair or maintenance item or a refurbishment investment,” it also made clear that it is a factor that the Commission can consider when making its determination as to whether an expenditure was related to maintenance or refurbishment. Id. at ¶ 18. Accordingly, we arrive at our final determination through an examination of the nature and character of the expenditures, of which tax treatment is one, but not the sole, indicator.

To determine the scope that the Facility has been refurbished we begin by incorporating the analysis of the 2013 Order. That order found that most of the refurbishment investments claimed by Covanta had been expensed in such a way as to indicate routine maintenance and repair and that the U-beam project had become a routine repair in the context of the Facility. The only remaining project, the bed boiler bed letdown screws, was alone insufficient to be considered refurbishment.

However, since the 2013 Order, Covanta has made a number of significant capitalized investments in the Facility that warrant consideration as refurbishments. In addition to its capital investments, Covanta identified expenditures associated with steam turbines that appear to have been expensed, but that are significant and not routine in the nature of U-beam repairs. These expenditures of over $1 million can properly be considered refurbishment investments in facility equipment.

At this time, the totality of projects completed by Covanta since September 1, 2005 to refurbish the Facility goes well beyond the *de minimis* refurbishments of the 2013 Order. These aggregated investments are of such nature, character, and scope that they meet the statutory definition of refurbished. Therefore, the Commission finds that the Facility has been refurbished. To approve certification, however, we still must find that the Facility is operating beyond its previous useful life or is employing an alternate technology that significantly increases the efficiency of the generation process.

C. Operating Beyond Its Useful Life or Employing an Alternate Technology

Covanta departs from both of its previous petitions in that it now contends that the Facility is employing alternate technology that significantly increases the efficiency of the generation process. Unlike the previous two petitions, the 2016 Petition does not appear to assert that the Facility is operating beyond its previous useful life.
In analyzing petitions made under Section 3(B)(3)(d) that claim employment of an alternate technology, the Commission has declined to address this issue when the project was found to be refurbished and operating beyond its useful life. Only once has the Commission determined that a petitioner was employing alternate technology. Request for Certification for RPS Eligibility (ReEnergy Fort Fairfield LLC), Docket No. 2011-00374, Order Granting New Renewable Resource Certification (June 14, 2013). However, even in that instance the Commission also found that the facility was operating beyond its useful life and only addressed alternate technology to conclude that one particular technology met that standard. Id. at 8. The Commission neither defined alternate technology nor explained why that technology constituted alternate technology.

Given that defining alternate technology for the purpose of analysis here would be a novel endeavor and that the Commission has already twice determined that the Facility is unquestionably operating beyond its useful life, we decline, consistent with our precedent, to analyze whether the Facility meets the alternate technology standard. Instead, we again accept that the facility is operating beyond its useful life.

Accordingly, the Commission

ORDERS

1. The electrical generation of the Covanta West Enfield Facility is hereby certified as a Class I New Renewable Resource eligible to satisfy Maine’s New Renewable Resource portfolio requirement pursuant to Chapter 311, § 3(B)(3)(c) of the Commission rules;

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5 See Rumford Paper Company Request for Certification for RPS Eligibility, Docket No. 2012-00439, Order Granting New Renewable Resource Certification, fn. 13 (Dec.19, 2013) (although the petitioner claimed alternate technology, the Commission decided that “it is not necessary to make a determination on the eligibility of the refurbishment investment under this sub-prong since we find the Facility is already refurbished based upon investments made to date and is operating beyond its previous useful life”); Verso Bucksport LLC Request for Certification for RPS Eligibility, Docket No. 2011-00102, Order Granting New Renewable Resource Certification (Nov. 23, 2011) (“given that we have already determined that the Bucksport Biomass Plant meets the refurbishment standard, it is not necessary to make a finding as to whether these improvements would meet the ‘alternative technology’ test”); Contoocook Hydro, LLC Request for Certification for RPS Eligibility, Docket No. 2013-00163, Order Granting New Renewable Resource Certification, fn. 7 (while the petitioner “sought qualification under the alternate technology sub-prong,” it was “not necessary to make a determination here on whether the Facility meets this standard, and we decline to do so, as the Facility is operating beyond its previous useful life”).
2. Covanta Maine, LLC, or the Facility’s successive owner, shall provide timely notice to the Commission of any material change in the character or operation of the Facility from that described in the petition filed in this proceeding.

Dated at Hallowell, Maine, this 14th day of September, 2016.

BY ORDER OF THE COMMISSION

/s/ Harry Lanphear
Harry Lanphear
Administrative Director

COMMISSIONERS VOTING FOR: Vannoy McLean Williamson
NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC 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. 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.
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1. **Reconsideration** of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.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.

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