I. SUMMARY

We certify as a Class I New Renewable Resource the output of the Rumford Paper Company ("RPC") Recovery Boiler located at the Rumford Mill in Rumford, Maine as eligible to satisfy Maine’s new renewable resource portfolio requirement pursuant to Chapter 311, § 3(B) of the Commission’s rules. This certification is for the generation from the steam produced by the combustion of renewable biomass in the Recovery Boiler, pursuant to the calculation specified in this Order. ¹

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.² 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 Commissioner Littell dissents. See attached Dissenting Opinion.
² 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 requirements; 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.4

Chapter 311, section 3(B)(4) of the Commission’s rules, establishes a certification process that requires generators to pre-certify facilities as a new renewable

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3 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.

4 The 125th Maine State Legislature recently amended 35-A M.R.S.A. § 3210, sub-section 2, B-4, to provide additional guidance on the meaning of the term refurbish. The new language states that “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.” P.L. 2011, Ch. 413, § 1.
resource under the requirements of the rule and provides for a Commission
determination of resource eligibility on a case-by-case basis.\footnote{In the \textit{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.} 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
certification under vintage categories 2, 3 and 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. Petition for Certification

On August 30, 2012, Rumford Paper Company ("RPC"), a subsidiary of
NewPage Corporation, filed a petition to certify its C-Recovery Boiler power plant
located at the Rumford Mill in Rumford, Maine ("Facility") as a Class I New Renewable
Resource under the refurbishment provision of the Commission’s renewable portfolio
rules. Ch. 311, § 3(B)(3)(d). After a protective order was issued by the Commission
Staff, RPC supplemented its petition with confidential documents by September 11,
2012. Staff had numerous information requests and RPC provided responses on
February 15, 2013, April 22, 2013, August 27, 2013, and November 1, 2013. As
required by our rules, the Commission provided interested persons with an opportunity
to comment on RPC’s Petition. One comment was received from the Maine Renewable
Energy Association (MREA).

The petition states the C-Recovery Boiler is fueled primarily by "black
liquor," with No. 6 oil being used only for startup and upset conditions. No. 6 oil
represents about 1% of the annual heat input into the C-Recovery Boiler. The petition
states the C-Recovery Boiler provides steam to the #4 turbine generator, producing a
maximum of 38 MW of generation from this source of steam. The #4 turbine generator
is also fed with steam by two other boilers.\footnote{The Recovery Boiler is one of several steam generation sources contained in
the Rumford Paper Mill. The other two multifuel boilers may also burn renewable fuel to
produce renewable steam, but RPC has not sought Class I certification of these steam
generation sources. The Commission has determined that a portion of a renewable
generation facility can be certified as a Class I eligible resource. See Order Granting In
Part and Denying In Part New Renewable Resource Certification in Docket No. 2012-
81.}

RPC states its C-Recovery Boiler was installed in 1980, and the #4 turbine
generator was installed in 1990. The petition states the typical life expectancy of a
recovery boiler of the type in operation at the Rumford Mill is 20 years. The petition
states refurbishment investments since September 1, 2005 have totaled $10.04 million
and include projects such as the boiler deaerator, rappers, drives, and tankages as well
as process improvements to improve heat utilization and boiler uptime. The petition
states another $4 million is budgeted for the 2013-2014 timeframe to install new
metallurgy in the generating bank to restore the C-Recovery Boiler’s efficiency, having
had approximately 10% of the tubes in the generating bank plugged due to thinning of their walls.

C. Public Comments

The Maine Renewable Energy Association (MREA) filed comments on RPC’s petition on October 12, 2012 urging the Commission to carefully review whether certifying a recovery boiler that is fueled with “black liquor,” and that has a principal and primary purpose not for electrical generation but to recover chemicals as part of the pulping process for papermaking, can reasonably constitute a new renewable biomass source of electrical generation.

RPC filed responsive comments on October 26, 2012. RPC claims that black liquor does constitute an eligible wood waste, stating that the “broad definition” of biomass adopted by the Commission is consistent with the Commission’s certification of Lincoln’s biomass facility as a Class I New renewable resource by including “black liquor” with wood waste and process sludge. Order Granting New Renewable Resource certification, Lincoln Paper and Tissue, LLC, Docket No. 2008-173 (Jan. 27, 2009). Further, RPC states that the statute contains no requirement that the recovery boiler be a “principal and primary” source of electrical generation. Rather, it must be “a” source.

III. DECISION

A. New Renewable Resource Certification

After considering RPC’s Petition and the additional information provided by RPC in response to Staff’s questions, we find that RPC’s C-Recovery Boiler has been refurbished pursuant to Chapter 311, section 3(B)(3)(d), and therefore its output qualifies as a Maine Class I New Renewable Resource. Our decision to grant Class I certification for the Rumford Facility is based upon our finding that RPC has satisfied each of the following elements of Class I New Renewable Resource eligibility: (1) Resource Type; (2) Capacity Limit; and (3) Vintage.

1. Resource Type

RPC’s Petition states that the C-Recovery Boiler is fueled primarily by “black liquor,” with No. 6 oil being used only for startup and upset conditions. RPC seeks Class I certification for only the portion of the generation derived from black liquor.

We have previously determined that black liquor is an eligible renewable resource under the definition of biomass for the reasons set forth in our Order Adopting Chapter 311 and reiterated in our Order Granting New Renewable Resource Certification for the Lincoln Paper and Tissue biomass facility.7,8 We also note

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7 In the Commission’s Order adopting Chapter 311, the Commission concluded that, “without further legislative direction and in light of the unqualified statutory term “biomass,” the Commission would adopt a relatively broad definition that includes all fuel derived from wood and wood byproducts (along with other organic sources).” Public
that MREA’s suggestion that C-Recovery Boiler be ineligible because the principal and primary purpose may not be for electrical generation is inconsistent with the Commission’s findings of Maine Class I RPS eligibility for the output of Verso Androscoggin and Sappi Somerset recovery boilers.8,9

2. Capacity Limit

Chapter 311, section 3(B)(2) provides that a new renewable resource other than wind must not have a nameplate capacity that exceeds 100 MW. The total nameplate capacity of the entire Rumford Paper Mill exceeds 100 MW, a sum of the 103 MW #4 turbine generator and a smaller turbine generator. While the entire nameplate capacity of the Mill exceeds the capacity limit, the Commission has found that the capacity limit applies to the total renewable resource portion of a facility.10 Because the Rumford Paper Mill burns other fuels including oil, coal, and tire derived fuel in its boilers, the renewable resource portion of the facility, namely the output from the combustion of biomass in the C-Recovery Boiler, #6 multi-fuel boiler, and #7 multi-fuel boiler, has an apportioned nameplate capacity below 100 MW.

This conclusion is based upon the recent historically observed proportion of fuels combusted. While the proportion of fuels combusted will vary somewhat from year to year, the Commission does not foresee the 100 MW capacity limit being exceeded unless there is a material change in the operation of the facility, including the fuel burned in the generation process. However, as with all other Class I certifications, the Commission requires the Facility to provide notification of material


8 In the Commission’s Order certifying the Lincoln Paper and Tissue biomass facility as a Class I New Renewable Resource, the Commission found that the fuel used in the Lincoln facility, including wood waste, process sludge and black liquor, constituted biomass under Maine’s RPS law. Lincoln Paper and Tissue, LLC Request for Certification for RPS Eligibility, Docket No. 2008-173, Order Granting New Renewable Resource Certification at 6 (Jan. 27, 2009).


11 In the Commission’s Order certifying the Verso Bucksport biomass facility as a Class I New Renewable Resource, the Commission found that since Chapter 311, section 3(B)(1) defines a new renewable resource as a generation facility that generates electricity with the renewable fuels set forth in the rule, it would consider only the portion of the Bucksport Paper Mill’s nameplate capacity attributable to the renewable output, namely the Bucksport Biomass Plant, as constituting the renewable capacity resource. Verso Bucksport, LLC Request for Certification for RPS Eligibility, Docket No. 2011-102, Order Granting New Renewable Resource Certification at 6 (Nov. 23, 2011).
changes in the generation process, further mitigating the possibility of exceeding the cap.

3. **Vintage**

RPC seeks certification under the refurbishment prong of the vintage criteria contained in Chapter 311, section 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 operating beyond its previous useful life or employing an alternate technology that significantly increases the efficiency of the generation process.

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.A. § 3210(2)(B-4).¹²

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. Public Utilities Commission*, 2012 ME 74, ¶ 16 (2012) (Covanta).

Pursuant to the Law Court’s analysis in Covanta, 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*, 2012 ME 74, ¶¶ 17, 19.

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¹² 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).
i. **Refurbishment**

The Commission’s practice in assessing whether a generation facility has been refurbished is to examine a collection 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.

In its Petition, RPC provides a list of capital investments made to RPC’s Rumford Facility since September 1, 2005 totaling approximately $10 million. These include investments in a new boiler deaerator, rappers, drives, and tankages as well as steam process improvements to improve heat utilization. In addition to the significance of the investments made, also at issue is the degree to which some of the investments may or may not be more associated with the pulp and paper production process versus the electrical generation process, or whether these processes are really clearly separable. We find that the completed projects to date are significant in scope, and while some of the investments may provide benefits to both the pulp and paper and electricity generation processes, at least in this instance, it is not necessary (or likely possible) to assign these benefits as primarily generation or pulp and paper related. It is clear that the refurbishments relate to the thermodynamic cycle of the Facility as a whole that serves to generate electricity. While the additional replacement of the generating bank of the C-Recovery Boiler in the 2014-2015 timeframe, at an estimated cost of approximately $4 million, will further refurbish the Facility, we find that the nature, character, and scope of investments made to date go beyond routine maintenance or repair, and are sufficient to certify the renewable-based electrical generation derived from the C-Recovery Boiler steam via #4 turbine generator as consistent with the statutory definition of a generation facility that has been refurbished after September 1, 2005.

ii. **Operation Beyond the Facility’s Previous Useful Life**

RPC seeks qualification of its investments under the useful life sub-prong of the refurbishment vintage category, stating that the “typical life expectancy of a recovery boiler of the type in operation at the Rumford Mill is 20 years” and that now the “boiler is 32 years old.” Petition at 3.\(^{13}\)

Consistent with our findings for the useful life of the Verso Androscoggin and Sappi Somerset recovery boilers,\(^{14}\) we find here that, absent

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\(^{13}\) While RPC claims that the new generating bank would “constitute an alternate technology (different metallurgy) that will significantly increase the efficiency of the existing generation process” (Petition at 6), 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.

evidence of a significant refurbishment over the intervening time frame, the RPC C-Recovery Boiler, at over 32 years old, is operating beyond its previous useful life.

B. Methodology for Calculating RECs

RPC proposes\(^{15}\) a proportional method for calculating the REC output of the generation from the Facility that is similar to the method approved by the Commission for the Verso Androscoggin Biomass Facility. This method for calculating REC production determines the qualifying MWh output of RECs by prorating the total output of #4 turbine generator in each hour by the proportion of steam produced by Class I eligible fuel inputs from the C-Recovery Boiler relative to the total steam produced by other fuels (in the Recovery Boiler) and other boilers that feed the #4 turbine generator (regardless of fuel type) (Proportional Method).

For the reasons stated above, and in accordance with the Proportional REC calculation method described above, we grant certification of the renewable electrical generation derived from the output of RPC C-Recovery Boiler as a Class I New renewable resource eligible to satisfy Maine’s new renewable resource portfolio requirement pursuant to Chapter 311, § 3(B) of the Commission rules. The quantification of the applicable Class I RECs from the Facility is subject to submission (and subsequent Commission approval) of a compliance filing by RPC that provides more detail on the measurement, calculation, and verification process for the REC calculations.

To the extent that any of the electricity from the RPC Facility serves Facility load (i.e., behind-the-meter generation), we conclude that RPC must retain GIS certificates or otherwise obtain GIS certificates necessary to satisfy Maine’s RPS (both the original 30% and the “new” requirement) for that portion of its load that is served by the facility. See Lincoln Paper and Tissue, LLC, Request for Certification for RPS Eligibility, Docket No. 2008-173, Order Granting New Renewable Resource Certification at 8 (January 27, 2009). RPC shall submit to the Commission an annual report by July 1\(^{st}\) of each year that demonstrates compliance with this requirement.

Accordingly, we

ORDER

1. That the electrical generation of the RPC Rumford Facility derived from the renewable output of the C-Recovery Boiler is certified as a Maine Class I New Renewable Resource. Final determination of the method to be used to calculate the renewable output of the C-Recovery Boiler will be made by the Commission under its approval of the compliance filing described below;

2. That RPC shall make a compliance filing with the Commission by December 30, 2013 detailing the measurement, calculation, and verification process proposed

\(^{15}\) See RPC Response to Staff Written Information Request No. 2, #1 and illustrated in confidential Attachments 1 and 2 (August 27, 2013)
to quantify the RECs under the Proportional Method as described in the body of this Order;

3. That RPC, on an annual basis thereafter, beginning on July 1, 2015, shall file with the Commission an annual report that:

   a) demonstrates the full basis for the calculation of the RECs generated from the RPC Facility in a manner consistent with the method adopted by the Commission in its approval of the compliance filing. This report should include how the steam and electrical generation metering equipment associated with the RPC Facility related to the C-Recovery Boiler and #4 turbine generator have been calibrated; how the metered data have been reviewed, and (if applicable) corrected for accuracy; and how the MMbtu content of the black liquor and fuel oil combusted in the C-Recovery Boiler have been established and verified; and

   b) demonstrates compliance with the requirement that RPC must retain GIS certificates or otherwise obtain GIS certificates necessary to satisfy Maine’s RPS (both the original 30% and the “new” requirement) for that portion of its load that is served by the RPC Facility; and

4. That RPC shall provide timely notice to the Commission of any material change in the characteristics or operation of the RPC Facility, including the type of fuel used in the generation process, from that described in the submissions filed by RPC in this proceeding. RPC shall also provide timely notice to the Commission of any material change in the characteristics or operation of other components of the Rumford Paper Mill that materially impact the characteristics, operation, or eligibility for certification of the RPC Facility.

Dated at Hallowell, Maine, this 19th day of December, 2013.

BY ORDER OF THE COMMISSION

/s/Harry Lanphear

Harry Lanphear
Administrative Director

COMMISSIONERS VOTING FOR: Welch
   Vannoy

COMMISSIONER DISSENTING: Littell
DISSENT OF COMMISSIONER LITTELL

The majority unnecessarily reaches out to expand those facilities that qualify for issuance of Class I renewable energy credits (RECs). A narrower decision would have been unanimous to qualify the Rumford Paper Company for Class I RECs after completion of the generating bank replacement.

In this case, the breadth of the majority opinion to expand the definition of Electrical Generation to include the entire integrated pulp and paper mill is not supported by the statutory language in Title 35-A, Section 3210. Major expansions of RPS qualifications are the province of the Legislature, not this Commission.

I. Analysis of Refurbishment

A. Fuel tank repairs and new installation

A significant portion of the capital expenditures at the Rumford facility has been spent on tankages: [REDACTED] Black liquor storage is an integral and necessary part of the paper-making process and those tankages [REDACTED] are part of the black liquor fuel delivery system and thus related to the C-Recovery Boiler/#4 turbine electrical generation process. [REDACTED]

All of the expenditures relate primarily and directly to the pulping process. They are related only indirectly to the electrical generation which was added years, in fact decades, after the pulping process was engineered, built and in operation. If these improvements to the pulping process are counted as investments for an RPS qualifying refurbishment, then it appears that any thermal process improvements for any biomass
co-gen facility whether commercial, industrial or large scale residential will qualified for Class I credits. The statute neither dictates nor even suggests this result.

B. C-Recovery heat utilization improvements

Another roughly one-third of the past capital expenditures has been spent on the low pressure steam consumption process in the pulp and paper production system. These projects are 1) a new surface condenser and 2) a new heat exchanger. While these improvements in steam utilization are implemented for the pulping process system, RPC claims they contribute to refurbishment of the C-Recovery Boiler system because these investments have the effect of increasing the steam rate for electrical generation in the C-Recovery Boiler system. That claim relies on a series of assumptions and allocations some of which are not consistent with the facts gathered by Commission staff in this case.

The new surface condenser captures heat as part of the evaporator set that concentrates weak black liquor to a useable fuel concentration and sends that heat via new steam piping to other parts of the Mill for utilization in the pulping process. The heat is not sent to the electrical generation unit.

While heat is not sent to a generator, this is a desirable efficiency investment because prior to installation of the new surface condenser, some of the heat from the evaporation process was wasted and not captured for use in the Mill. Although this waste heat is used in the pulping process, rather than the generation process, RPC claims the utilization of this waste heat to pre-heat process water in downstream pulping equipment offsets the use of live steam that would have been supplied by the process steam extractions of the #4 turbine generator. The theory put forward by RPC is that efficiency improvements in the pulp plant allow them to either reduce their need for their most expensive fuel or decrease the need for steam from the C-Recovery boiler thereby increasing the amount of steam available to produce electricity. [REDACTED].

RPC is not claiming that the evaporator surface condenser is an alternate technology. The new heat exchanger recovers waste heat from the Mill’s pulping process to pre-heat the C-Recovery Boiler makeup water. As warmer makeup water, less live steam is needed to bring the water up to temperature for use. And again, while RPC claims this increases electrical generation, RPC is not claiming the heat exchanger is an alternate technology.

The issue is whether these heat utilization improvements should be considered a refurbishment to “renovate, reequip or restore the renewable capacity resource” 35-A M.R.S. §3210(2)(B-4), or whether the nature of these heat utilization improvements instead goes to improving the thermal-side pulping process steam utilization process. There is little factual dispute that these heat utilization improvements are primarily improvement in on the pulping steam (thermal) side of the mill rather than electrical generation.
If we are to allow investments in the thermal side to qualify as refurbishments of the mill’s electrical generation with little if any support in statute for this major expansion of qualifications, the Legislature needs to announce this significant new policy – it opens up all thermal process efficiency for full credit for the Maine Class I RPS program outside a refurbishment of the actual electrical generation units (i.e., the generator, turbine, and boiler). There is no indication at all that the Legislature intended us to look beyond the electrical generation units. Since the thermal side is predominant at a pulp and paper mill, this new qualification allowance will continue the trend of this Commission in issuing Class I certifications for virtually any capital improvements. There is no indication that Legislature intended this and it is a very wide opening of the RPS likely to flood the market with RECs in a way the Legislature never intended and is inconsistent with the statute.

Further, the factual assumption that steam improvements flows back to electricity generation is not clearly supported. The new surface condenser was installed on the C-Recovery Boiler system to improve steam utilization efficiency in the pulping system. Conversely, the heat exchanger was installed on the pulping system to improve steam utilization efficiency in the C-Recovery Boiler system. In both cases, RPC’s claim rests on the assumption that the pulping process activity is held constant, with all benefits accruing as increased electrical generation. Staff has had discussions with RPC on how it might verify the increase in steam output has accrued entirely to the electrical generation system, including examining increases in paper mass output (which might indicate benefits accruing to the pulping system). The heat utilization improvements can yield more energy for more pulping and in fact that is what happened based on the record before the Commission. [REDACTED] RPC maintains that paper mass output can vary due to many other factors. The increase in production (which is imperative for a pulp and paper mill’s economic growth) belies the inaccuracy of the assertion/assumption the saved thermal energy resulted in less thermal production and more electrical production from the turbine – the savings have gone into increased production, which is entirely appropriate, efficient and a good outcome, simply not electrical production qualifying for RECs under the statute.

As with the new pulping liquor tanks, if these improvements to the pulping process efficiency are counted as an RPS-qualifying refurbishment, then any black liquor recovery boiler and any biomass boiler (which also produces process steam for a mill) will be qualified for Class I credits because pulp mill capital improvements of this magnitude occur regularly. This majority opinion is so broad that thermal facilities connected with any biomass co-generation may well qualify. This reasoning lowers the standards of qualification for Class I RECs.

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16 See, for instance, RPC response to Staff Information Request #2, answer 2 (August 27, 2013).
C. The Legislature knew how to specify qualifying electrical, thermal and mechanical power and in fact did so for Class II qualification – not Class I

Within the very same statutory section, Title 35-A Section 3210, the Legislature defined as “efficient resource” as a qualifying cogeneration facility and distinguishes “electrical energy” “useful thermal energy output” and “useful thermal energy. See 35-A M.R.S. §3210(2)(A). Clearly the Legislature knows how to qualify and specify thermal energy that might qualify for RPS certification when it wants to. The statute is facially clear that certain types of co-generation can qualify for Class II but not Class I qualification.

The majority decision rides right over the careful definitions set forth in the statute and imports thermal energy improvements as a qualifying refurbishment with no statutory support. The Legislature made these distinctions and did not define qualifying electrical generation as including thermal energy. The definition of “Eligible resource” is “electrical generation” that “Generates power that can be physically delivered to the control region . . .” See 35-A M.R.S. §3210(2)(B). Thermal energy improvements to the pulp mill are neither “electrical generation” nor do they “generate power that can be physically delivered to the control region.” The statute is clear on its face that the claimed refurbishment expenses in new tankage and heat-utilization are not qualifying.

D. Nature of remaining past capital expenditures

The remaining past capital expenditures including the dearator and rappers, are de minimis. The replacement of the original dearator is likely a contributing refurbishment expenditure due to having reached the end of its useful life. The drives, which control the C-Recovery Boiler induced draft fan had begun to experience reliability issues and were otherwise obsolete, and so were replaced. A new second set of rappers helps to optimize emission removal from the C-Recovery Boiler exhaust. I do not discuss them further due to their de minimis nature.

E. Nature of anticipated generating bank replacement

While RPC believes the C-Recovery Boiler qualifies as a refurbished facility based upon the expenditures to date, RPC also describes the anticipated
replacement of the C-Recovery Boiler generating bank in 2013-2014 (now anticipated for the 2014-2015 time frame). Over time, the tubes in the generating bank have had to be plugged due to thinning of their walls, reducing boiler efficiency. Having reached about 10% of tubes being plugged, RPC has determined that the entire generating bank needs replacement. The new generating bank will employ a different metallurgy, and RPC claims this to be an alternate technology that will significantly increase the efficiency of the generation process by restoring the efficiency of the boiler to its original design efficiency.

The Commission has not yet determined whether returning a system to its original efficiency can qualify as “a significant increase in the efficiency of the generation process.” However, it does not appear to be necessary to make a finding on whether this would constitute an alternate technology that significantly increases the efficiency of the generation process. The C-Recovery Boiler is 32 years old (as of 2012) and therefore likely operating beyond its previous useful life. The replacement of the generating bank would be a significant investment that will allow the C-Recovery Boiler to continue operation. Accordingly, this project would qualify the C-Recovery Boiler/generator as refurbished under the useful life vintage prong of the statute.

While work on replacing the generating bank has not yet occurred, RPC has begun spending money on the project. The total investment in the generating bank and new metallurgy would constitute a substantial investment in refurbishing the C-Recovery Boiler ($4 to $4.5 million out of a $17.41 million (as of 2012) total C-Recovery Boiler system book value)). Like capital treatment, a comparison of the expense to the total value of the generation facility is one factor we look to in assessing whether the investment is regular maintenance and repair or whether it in fact is a refurbishment under the statute.

The majority could have avoided a broad, expansive decision by ruling more narrowly on the generating bank replacement.

II. Recent Commission Refurbishment Decisions have the effect of Significantly Increasing the Supply of Maine Renewable Energy Credits

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17 The Commission determined that in the case of the Verso Androscoggin recovery boiler #1, that a recovery boiler, last refurbished in 1986, was operating beyond its previous useful. While the Commissions stopped short of agreeing with Verso Androscoggin that the useful life of a recovery boiler was 20 years, the Affidavit of William R.Spangler, which the Commission referred to as part of the “sufficient evidence” examined in its decision, did rest in part on an argument for a 20 year life of a recovery boiler (Verso Androscoggin LLC Request for Certification for RPS Eligibility, Docket No. 2012-301, Order Granting New Renewable Resource Certification at 8-9 (Dec. 19, 2012)).
The Commission staff and Commissioners track the New England energy, capacity, REC and other related markets. Several years ago, New England Class I RECs were valued within a roughly comparable range. At the beginning of November, Maine Class I RECs had declined to about $15/MWh even before this decision. The rest of New England is experiencing Class I REC prices that are trading at their ACP (alternative compliance payment) cap level above $50/megawatt-hour for Connecticut and New Hampshire and above $60/megawatt-hour for Massachusetts and Rhode Island. Maine Class I REC prices have been declining relative to other state Class I RECs. While it is not unusual to see the REC trading at somewhat different levels with somewhat different trends, the Class I RECs have generally moved together until the last several years when a significant decline in Maine RECs began.

For New England, Class I generally represents only new renewable generation across state RPSs (vintage requirements generally require commencement of operation sometime shortly before or after the start of the 21st century). While the Maine Class I market was established by the Legislature to incentivize new renewable and refurbished renewable investments, the broadening interpretation of the refurbishment provision in the Maine Class I program has caused Maine Class I RECs to move towards being represented by “refurbished” existing facilities instead of physically new facilities (note that REC prices for existing non-refurbished renewable resources, referred to as Class II RECs, are < $1/MWh for Maine, Rhode Island, and Connecticut).
This figure shows REC prices by State for 2009 through 2013 from publically available DOE data. These Class I prices are essentially unchanged at the beginning of November 2013, except that Maine Class I RECs have further declined further to about $15/MWh.

I have contended in previous decisions that the refurbished standards should be interpreted consistent with other qualifying Class I facilities to be akin to “like new.” This view has not met favor with the current Commission which has certified refurbishments with lower qualification standards with each successive decision.

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18 Recent historic REC prices are publically available from the DOE: http://apps3.eere.energy.gov/greenpower/markets/certificates.shtml?page=5
NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 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 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.

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.A. § 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.A. § 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.