I. SUMMARY

We certify as a Class I New Renewable Resource the Hopkinton hydroelectric project located in Contoocook, New Hampshire as 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 requirement as “Class I” and incorporated the resource type, capacity limit, and the

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.

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
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.  

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 resource under the requirements of the rule and provides for a Commission referred to as “Class I.” Maine’s pre-existing “eligible” resource portfolio requirement is designated as Class II.

³ 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.
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 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 February 25, 2013, Contoocook Hydro, LLC (“Contoocook”) filed a petition to certify its 250 kW Hopkinton hydroelectric project (“Facility”) located on the Contoocook River at 33 Pine Street in the Town of Contoocook in Merrimack County, New Hampshire, as a Class I New Renewable Resource under the refurbishment provision of the Commission’s renewable portfolio rules. Ch. 311, § 3(B)(3)(d).

According to the petition, the power equipment was originally installed at the Facility in 1984. Contoocook stated that at the time it purchased the Facility in 2008, the Facility was marginally profitable at best given the Facility’s poor and declining levels of electric production. Contoocook stated in the petition that had the expenditures not been made on the Facility, it is doubtful the Facility would remain in operation after its above-market power sales contract expired in November 2013. According to the petition, 42.75% of the Facility’s post 2008-electric production is attributed to the post-April 2008 capital and efficiency improvements made by Contoocook. The petition requests Class I certification for the entire output of the Facility, but states that if Class I treatment is not granted for the full Facility, Contoocook requests that Class I treatment be granted for 42.75% of the output. The petition also states the Facility meets all applicable federal and state fish passage requirements.

On March 20, 2013, Contoocook filed additional material to complete their initial application (“Petition”) that includes a list of Contoocook’s expenditures constituting the claimed refurbishments, which were performed between May 2008 and September 2012. These expenditures include dam work, new fans, new generator equipment, and a new powerhouse roof. Contoocook’s supplemental filing also included photographs of the installed fish passage and a calculation of the claimed efficiency improvements.

As required by our rules, the Commission provided interested persons with an opportunity to comment on Contoocook’s Petition. No comments were received.

Staff issued its first information request on August 15, 2013, to which responses were filed on August 25, 2013. Staff also issued a second information request on December 31, 2013, to which responses were filed on January 5, 2014.

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.
III. DECISION

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

A. Resource Type

Contoocook’s Petition states that the Hopkinton hydroelectric project is a hydroelectric facility that meets all state and federal fish passage requirements. Contoocook provided photographs confirming the installation of downstream fish passage. Based upon the information filed by Contoocook, we find that the Facility is in compliance with the fish passage requirements of 35-A M.R.S. §3210(2)(B-3)(e).

B. 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 Facility is 250 kW, and as such does not violate the 100 MW cap.

C. Vintage

Contoocook 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.

According to the Petition, 42.75% of the Facility’s post 2008-electric production is attributed to the post-April 2008 capital and efficiency improvements made by Contoocook. Contoocook requests Class I certification for the entire output of the Facility, but states that if Class I treatment is not granted for the full Facility, then Class I treatment be granted for 42.75% of the output. We note that the Commission has declined to adopt the approach proposed by Contoocook to certify incremental generation in its Order adopting Chapter 311 Rules (Amendments to Portfolio Requirement Rule (Chapter 311), Docket No. 2007-391 at 7 (Oct. 22, 2007)).
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).

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.

1. 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, Contoocook provides a list of investments made to the Facility since September 1, 2005. According to Contoocook, Contoocook does not write off these expenditures for tax purposes, which would otherwise indicate whether these expenditures were capitalized or expensed for tax purposes.

Absent information regarding which investments were capitalized or expensed, it is more difficult to distinguish which projects more closely fit the definition of routine maintenance or repair rather than refurbishment investments. However, we find that while some of the investments made at the Facility are more in the nature of routine repair, on balance, we conclude that the expenditures, taken together, are

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6 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).
sufficient to constitute a refurbishment of the Facility. For instance, repairs to the dam in 2008 and 2012 and repair of the trash racks in 2008 go beyond routine maintenance. Indeed, the bulk of listed investments similarly go beyond routine maintenance. As such, we determine that the Facility has been refurbished to be a new renewable generation resource for purposes of Maine Class I certification.

2. Operation Beyond the Facility’s Previous Useful Life

Contoocook seeks qualification of its investments under the useful life sub-prong of the refurbishment vintage category. The Petition indicates the age of the Hopkinson hydroelectric dam exceeds 200 years, and many pieces of equipment are new or replace original equipment installed in 1984. With the dam exceeding 100 years and much of the replaced or upgraded equipment otherwise now being at 30 years of age, we find the Facility is operating beyond its previous useful life.

Accordingly, we

ORDER

1. That the electrical generation of the Hopkinson hydroelectric project is certified as a Maine Class I New Renewable Resource; and

2. That Contoocook, or the Facility’s successive owner, shall provide timely notice to the Commission of any material change in the characteristics or operation of the Facility, including applicable fish passage requirements, from that described in the submissions filed by Contoocook in this proceeding.

3. That ongoing certification is contingent upon continued compliance with any fish passage requirements that applicable federal and/or state agencies may impose.

Dated at Hallowell, Maine, this 23rd day of January, 2014.

BY ORDER OF THE COMMISSION

/s/ Harry Lanphear
Harry Lanphear
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Littell
Vannoy

7 Contoocook also sought qualification under the alternate technology sub-prong, but it is 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.
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.