I. SUMMARY

By this Order, the Commission adopts amendments to its portfolio requirement rule (Chapter 311) that are routine technical and provisionally adopts an amendment which is major substantive to implement recently enacted legislation.

II. BACKGROUND

On June 26, 2019, the Governor signed L.D. 1494, An Act To Reform Maine’s Renewable Portfolio Standard (Act).¹ The Act became effective September 19, 2019. The Act makes several changes to Maine’s renewable portfolio requirements (RPS or portfolio requirements). These include changes to resource eligibility; removes the provision that the 10% requirement for Class I end in 2022; creates a new Class IA renewable resource portfolio requirement; and creates a new thermal renewable energy resource requirement. The Act also applies a 300% multiplier for the output of a generator fueled by municipal solid waste in conjunction with recycling for the Class II portfolio requirement. The changes to the rule are routine technical pursuant to Title 5, chapter 375, subchapter 2-A, with the exception of the Class II 300% multiplier provision in Section 4 of the proposed rule which is major substantive pursuant to Title 5, chapter 375, subchapter 2-A.

III. RULEMAKING PROCESS

On August 9, 2019, the Commission issued a Notice of Rulemaking (NOR) and proposed rule that would implement most of the changes to Chapter 311 required by the Act. The Commission noted that the Act’s provisions regarding a new thermal renewable energy resource requirement does not begin until 2021; thus, the amendments to the rule related to this new requirement would be conducted in a subsequent rulemaking proceeding. 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 12 and two rounds of written comments. The following interested persons provided written comment on the proposed rule: ReEnergy Biomass Operations LLC (ReEnergy), Natural Resources Council of Maine (NRCM), Maine Renewable Energy Association (MREA), The Nature

¹ P.L. 2019, c. 477.
Conservancy (TNC), Retail Energy Supply Association (RESA), Industrial Energy Consumer Group (IECG), Eastern Maine Electric Cooperative (EMEC), Central Maine Power (CMP), Brookfield Renewable Energy, L.P. (Brookfield), Conservation Law Foundation (CLF), Helix Maine Wind Development, LLC, the Governor’s Energy Office (GEO), Black Dog LLC, the Professional Logging Contractors of Maine, Houlton Water Company (HWC), Kennebunk Light and Power District (KLPD), Lignetics Inc., and Maine Pellet Fuels Association (MPFA).

IV. AMENDED RULE PROVISIONS

A. Purpose (Section 1)

The amended rule updates the purpose of this rule to reflect statutory changes made to 35-A M.R.S. § 3210(1) since the rule was last amended. No one commented on this section and it is unchanged from the proposed rule.

B. Definitions (Section 2)

The amended rule adds a number of definitions of terms used throughout the rule. Most of the added definitions come from the statutory definitions contained in the Act. In particular, the amended rule contains the statutory definitions for facilities that are eligible for each of the three classes of portfolio requirement required under Maine law. It also adds definitions for the Northern American Renewables Registry (NAR), and NAR certificates, which relate to renewable attribute trading for facilities located in northern Maine. The amended rule also adds a definition of “affiliate.”

IECG, in its comments, noted that the definition of alternative compliance payment (ACP) rate in section 2(B) of the proposed rule references a certain dollar amount per kilowatt-hour but the ACP rate referenced in section 3(D) of the proposed rule was stated in dollars per megawatt-hour noting that the units could be made consistent to enhance clarity. The Commission agrees and the amended rule uses per megawatt-hour in both places.

Black Dog LLC, in its comments, proposed that the description of biomass contained as part of the definitions for renewable capacity resource in Section 2(Y)(1)(f) and renewable resource in Section 2(AA)(2)(g) be changed to encompass newer biomass technologies that burn an intermediate product that is made from wood, wood waste or cellulose-based materials. Black Dog LLC acknowledges that the definitions in the proposed rule are identical to the statutory definitions contained in 35-A M.R.S. §§ 3210(2)(B-3)(1)(f) and 3210(2)(C)(2)(g) but asserts that the term “fueled by” in the definitions is ambiguous and may be read to unreasonably restrict the technologies used to convert biomass into electricity. Black Dog LLC notes that older biomass technologies relied on burning wood, wood waste or other biomass or using a particular process (e.g., anaerobic digestion) but that new technologies being developed use a range of biomass including wood, wood waste and agricultural by-products or wastes, as the feedstock to produce an intermediate product, which is then combusted to
generate electricity. Black Dog LLC notes that wood pellets would be excluded under the definition and notes that researchers at the University of Maine are using a chemical process to transform wood, wood waste or cellulosic-based waste into a liquid fuel, ethyl levulinate, as well as a waste by-product, biochar, which would be well suited as the fuel for a biomass electric generator. The newer biomass technologies discussed by Black Dog LLC appear to be consistent with the statutory definitions and the current definitions in the rule. As a result, the amended rule is unchanged from the proposed rule.

C. New Renewable Resources; Class 1 and Class IA (Section 3)

1. Requirement and Eligibility (Section 3(A), 3(B))

Sections 3(A) and 3(B) contain the statutory schedule for percentage requirements for Class I and Class IA. Consistent with the Act, this section of the rule provides that Class I resources used to satisfy the requirements of Class I may not be used to satisfy the requirements of Class IA or Class II and Class IA resources used to satisfy the requirement of Class IA may not be used to satisfy the requirements of Class I or Class II. MREA commented that while eligible resources may not be double counted; it wanted to be sure that existing eligible resources should not be impacted (i.e., any existing hydro not moving from Class II to Class I or Class IA shall remain eligible for the Class II market). In addition, MREA, the GEO and Brookfield commented that when accounting for the percentage limitations of the qualified hydroelectric output, the remaining output above each year’s maximum allowable amount should remain eligible for Class II. These interpretations are consistent with the Commission’s reading of the Act and there is no need to add or change any of the language contained in the proposed rule.

2. Commission Certification (Section 3(C))

Section 3(C) makes language changes to reflect the certification requirements with respect to Class IA eligible facilities.

ReEnergy commented that it was not clear what process will be followed for certifying Class IA status for facilities that have already completed the certification process for new renewable capacity resource status prior to enactment of the Act noting each current facility could be required to separately petition for Class I and Class IA status, or just petition for Class IA status, or the Commission could identify those currently eligible facilities that are likely to be ineligible for Class IA and communicate with that subset of current facilities to determine the correct level of eligibility and all other current facilities would automatically be deemed eligible for both Class I and Class IA. ReEnergy also commented that it would be more administratively efficient for the Commission to identify only the small subset of facilities that may not be eligible for both Class I and Class IA and communicate with that subset to determine the correct level of eligibility and all other current facilities would automatically be deemed eligible for both
Class I and IA which would ease the administrative burden for all parties and the Commission. The GEO supports this approach.

The Commission agrees and, accordingly, the amended rule provides that all Class I generation facilities certified by the Commission as of September 19, 2019, are automatically certified as Class IA generation facilities without any filing requirements, except those existing Class I generation facilities that were certified on the basis that the resource for at least 2 years was not operated or was not recognized by the New England independent system operator as a capacity resource and, after September 1, 2005, resumed operation or was recognized by the New England independent system operator as a capacity resource. These certified Class I resources are not eligible for Class IA.

3. **Alternative Compliance Mechanism (Section 3(D))**

Maine’s statute allows competitive electricity providers (CEPs) to satisfy the Class I and Class IA portfolio requirements through an alternative compliance mechanism (ACM) and requires the Commission to set the alternative compliance payment (ACP) rate by January 31st of each year and deposit all collected funds into the Energy Efficiency and Renewable Resource Fund established pursuant to 35-A M.R.S. § 10121(2). The Act specifies that the ACP must not be any higher than $50 per megawatt-hour. Section 3(D) of the proposed rule contained the statutory maximum amount of $50 per megawatt-hour. The Commission noted that Maine Class I eligible renewable energy credits (RECs) are currently trading at levels that are well below $50 per megawatt-hour and sought comment on whether the ACP should be initially set at a level that is closer to but still above, current market prices and then escalated in subsequent years until the cap is reached.

ReEnergy, NRCM, Helix Maine Wind Development LLC, MREA and CLF commented that the ACP should be $50 per megawatt-hour. ReEnergy commented that the Class IA REC product is not in existence and as a result there is no current market price for this product and that Maine’s Class I REC price may or may not be anywhere close to a Class IA REC. ReEnergy also commented at the public hearing that the ACP for Class I RECs in Maine today is about $70 and the market price is substantially below $10 and stated that we’ve seen that to be the case for multiple years where the ACP has no relevance on the market. NRCM stated that the Commission could set a different rate but would need to establish a basis for that price and it would be easiest to adopt the maximum rate set by the Legislature. NRCM further states that the purpose of the ACP is to contain costs below a threshold amount while giving renewable energy investors and developers sufficient latitude to make economic investment decisions and that that purpose would be accomplished by using the maximum rate. NRCM also points to the other cost containing policies in the Act, namely the ability of the Commission to suspend the RPS and a mandatory suspension triggered by use of the ACP beyond a de minimis amount. MREA commented that stakeholders left with the understanding that the ACP would be set at $50 per megawatt-hour and that there was never any discussion of a slow ratcheting up in order to reach that cap in a future year.
The GEO suggested that the Commission may want to consider setting an initial ACP rate at a premium above expected REC prices with annual adjustments based on changes in REC prices. GEO also suggested that the Commission may want to add a provision that requires it to consider adjusting the ACP if, in any one year, the ACP greater than 10% of the RPS obligations met through the ACP.

IECG stated that the Commission should use its discretion to manage the costs and rate impacts to consumers by setting an initial ACP rate that is closer to the current market price, as opposed to the $50 per megawatt-hour level, noting that the statute set $50 as the maximum ceiling price and that $50 is nearly 10 times higher than the actual commodity price as indicated in recent Maine Class I price indices. IECG stated that the Commission should substitute a more reasonable rate such as $20 per megawatt-hour that more properly reflects the balancing inherent in the Commission’s mission. IECG also noted that the Act requires that, in setting the ACP rate, the Commission take into account prevailing market prices, standard-offer service prices for electricity, reliance on ACPs to meet the RPS requirements and investment in Class I and Class IA resources and thermal RECs in the State during the previous calendar year.

RESA supports setting the initial ACP slightly above current market prices with annual adjustments based on the change in the Consumer Price Index until the cap is reached. RESA stated that if the Legislature had intended for the Commission to set the ACP at $50 per megawatt-hour immediately, it could have so stated. RESA states that by setting the ACP based on current market prices the Commission will ensure that the ACP as closely as possible reflects a fair price established by willing buyers and sellers interacting at arms’ length and the Commission will protect existing market conditions without exposing ratepayers to unnecessary costs. RESA further states that if the Commission were to set the ACP at or near the cap now, based on its experience, this would artificially inflate the cost of RECs to the detriment of ratepayers.

The Commission is persuaded by the comments of ReEnergy and others with respect to the relationship between the ACP and the market related to Class IA RECs. Because the market prices of Class IA RECs cannot be known in advance with any certainty and, historically, a high ACP has not affected the market rate Class I RECs, the ACP in the amended rule is $50 per megawatt-hour for both the Class I and Class IA portfolio requirements.

MPFA, Lignetics Inc. and the Professional Logging Contractors of Maine all commented that the Commission should set the ACP for the thermal RECs as part of this rulemaking proceeding. RESA commented that this issue was not noticed as part of this rulemaking proceeding and, accordingly, the ACP for thermal RECs should not be determined in this proceeding.

The Notice of Rulemaking in this proceeding specifically stated that, because the thermal renewable energy resource requirement does not begin until 2021, the rule amendments related to the thermal renewable resource requirement would be
conducted in a subsequent rulemaking proceeding. Accordingly, the Commission agrees that it would be inappropriate to determine the ACP for the thermal portfolio requirement in this rulemaking proceeding. The Commission notes, however, that it does not interpret the intent of the Act to require the establishment of a single ACP that would apply to the Class I, Class IA and the thermal portfolio requirements. Thus, the ACP for the thermal portfolio requirement need not be $50 per megawatt-hour.

4. **Suspensions (Section 3(E))**

The Act specifies that the Commission shall temporarily suspend all or some of the scheduled percentage increases in the Class IA requirement if the Commission finds that more than 10% of the obligations required to satisfy the requirement are satisfied through the ACP in three consecutive years.

A number of commenters noted that the proposed rule did not contain the "3 consecutive years" language contained in the Act. This was an oversight in drafting the proposed rule and the amended rule contains this language.

5. **Exemption (Section 3(F))**

This section of the rule contains the statutory exemption for retail supply contracts and standard offer arrangements that are in effect prior to the effective date of the Act. The Commission sought comment on whether the rule should contain a definition of supply contracts and asked whether the exemption should apply to a renewal or extension of an existing contract.

EMEC, KLPD and HWC stated that the exemption should apply to a renewal or extension of an existing contract stating that the contract terms would have been agreed to prior to the Act and any renewal or extension would have also been contemplated. IECG commented that the Act is clear that retail electricity sales pursuant to such a contract or arrangement are exempt including sales pursuant to an amended or renewed contract or arrangement that was in effect on or before the Act's effective date. CLF states the exemption should not apply to a renewal or extension of an existing contract.

GEO commented that it believes the exemption is intended to apply to existing arrangements including those that are the result of an amendment or extension of a prior contract. GEO goes on to state that it may be advisable to include a provision in the rule that allows the Commission to determine the applicability of the exemption on a case-by-case basis in instances where the current term of a supply contract or standard offer agreement may not be clear or in times then there may be a question as to whether an arrangement did predate the effective date of the Act.

MREA states there was limited discussion of this at the Legislature and that the focus was to ensure existing contracts would not be harmed. Given this, MREA asserts that one can reasonably infer that it did not intend to allow the exemption to
apply to prospective renewals or extensions. MREA supports including a definition that makes clear contracts that are exempted are those in effect at the time the law went into effect and that the exemption ceases on the end date of the contract that was in effect at that time.

RESA commented that the rule does not need a definition. Instead, RESA recommends that the Commission implement the exemption and require annual compliance reporting of contracts subject to the exemption consistent with the process the Commission employed when it adopted the Class I exemption. In addition, to the extent the Commission believes additional clarification is necessary, RESA suggests some language to add to Section 3(F) clarifying that only supply contracts or standard offer service arrangements executed, renewed or extended that are in effect on or before the effective date of the Act are exempt. RESA noted that it does not support exempting renewals or extensions that were executed after the effective date of the Act, but that the Commission should exempt renewals or extensions that were entered into on or before that date. ReEnergy commented that there should be a definition so parties could not attempt to include agreements that are not existing and that the Commission should not allow renewals or extensions to qualify.

The Commission agrees with the majority of commenters that the exemption applies to retail electricity sales pursuant to a supply contract or standard offer service arrangement that was in effect on or before the effective date of the Act, September 19, 2019, regardless of whether it was originally executed, renewed or extended prior to or on that date. However, for simplicity, the amended rule refers to contracts that are in effect as of September 19, 2019.

6. Transmission and Subtransmission Customer Options (Section 3(G))

Consistent with the Act, Section 3(G) of the proposed rule provided for an option for electricity customers that receive service at the transmission or substransmission voltage level to elect that its supply service not be subject to the Class IA resource portfolio requirement. The Commission sought comment on whether a customer who elects to be exempt from the Class IA portfolio requirement must also be exempt from the costs and benefits of the Class IA resource procurement provisions of the Act.

IECG states that the Act allows a transmission or substransmission customer the freedom to elect to be exempt from the Class IA portfolio requirement while not electing to be exempt from the costs and benefits of the Class IA resource procurement provisions of the Act. In its supplemental comments, IECG stated that for the renewable portfolio standard mandates of subsections 3-B and 3-C, while an election remains in effect, all retail sales of electricity to the transmission and substransmission customer are exempt from the requirements of subsections 3-B and 3-C, and neither electricity generation nor RECs produced by the customer may be used or applied to satisfy the requirements of these subsections. Similarly, IECG states, for the Section 3210-G procurement, while such an election remains in effect, the
transmission and subtransmission customer will not pay any costs or receive any savings that the Commission determines to result from contracts approved under section 3210-G, and the customer is not allowed to bid on any solicitation or obtain a contract under any procurement under that section.

GEO commented that while a customer has an active exemption to the Class IA requirement, the exempted customer may not, under any circumstances, participate in the costs and benefits associated with the Class IA resource procurement. Brookfield, CLF and TNC similarly commented that the Act limits any benefits associated with the Class IA program and related long-term procurements from being realized by those transmission and subtransmission customers that seek an exemption from the Class IA requirements unless they rescind the election. MREA commented that the guiding principle here was that they were all in or all out meaning that should a transmission or subtransmission customer elect to be exempt from the Class IA requirements they were also exempt from all the costs and benefits of the procurement section. The Commission agrees that a transmission and subtransmission customer that elects to be exempt from the Class IA portfolio requirement is also exempt from participation in the long-term procurement provisions of the Act.

The Commission also sought comment on whether the rule should specify that a generator that is an affiliate of a transmission and subtransmission customer that has elected to opt out of the Class IA portfolio requirement should be prohibited from having its generation used or applied to satisfy the Class IA requirement and, if so, whether the rule should contain a definition of “affiliate” for these purposes.

IECG commented that the Act does not include any language defining an affiliate of a transmission and subtransmission customer who exercises these options, nor does the Act extend the effects of a transmission and subtransmission customer’s exercise of these options to its affiliates. IECG supports the Commission’s authority to evaluate on a case-by-case basis whether an affiliate relationship preexisted the effective date of the Act or exists as a mere “sham” to skirt the side-effects of a large customer’s exercise of its options.

ReEnergy commented that it is important to prevent Class IA eligibility to any generator affiliate of a customer that elects to be exempt from the Class IA obligations. TNC commented that it is its belief that the intent of the law is to prohibit a customer who has opted out of Class IA, including its direct affiliates, from benefiting from Class IA and believes a definition of “affiliate” should be proposed for these purposes. Brookfield also commented that the Act restricts generation from being used for Class IA compliance in cases where the generator is an affiliate of a qualified transmission and subtransmission customer that has elected to opt out of the Class IA portfolio requirement. Brookfield also supported including a definition of affiliate.

GEO commented that generators affiliated with transmission and subtransmission customers that have elected to be exempt from the Class IA RPS should generally be prohibited from using or applying their generation of the Class IA
RPS to prevent gaming. GEO believes it would be helpful for the rule to provide direction regarding prohibited affiliations but suggests it might be beneficial to consider specific affiliations on a case-by-case basis as part of the Class IA certification or large customer exemption processes. NRCM, MREA and CLF also commented that the rule should prohibit gaming behavior. CLF suggested that the rule should specify that a generator that is a corporate affiliate of a transmission or subtransmission customer that has elected to opt out of the Class IA portfolio requirement should be prohibited from having its generation used or applied to satisfy the Class IA requirement.

The Commission agrees with the majority of comments and, accordingly, the amended rule provides a customer, or an affiliate of a customer, that has made an election under this provision is also prohibited from having its generation used to satisfy the Class IA portfolio requirement or from bidding for a long-term contract under the procurement section of the Act. The amended rule also adds a definition of “affiliate” to the definitions section of the rule (Section 2). It defines “affiliate” as: “any corporate affiliate or other entity that has a shared financial interest as determined by the Commission with a customer of a Maine transmission and distribution utility that receives service at the transmission or subtransmission voltage level.”

IECG also commented that the identify of a transmission and subtransmission customer be linked to its service locations such that if a corporate entity has multiple service locations in Maine that are served at transmission or subtransmission voltage level, each location is a separate transmission and distribution customer for purposes of it right to exercise the options defined in Section 3210, subsection 10. The Commission disagrees as the IECG's position would allow for "gaming" that is not contemplated by the Act.

RESA commented that, to ensure that customers and CEPs can determine if a transmission and subtransmission customer has made the election, the Commission maintain on its website a registry or database of transmission and subtransmission customers who provide it notice of their election not to be subject to the Class IA requirement and/or their subsequent rescission of this election. At the public hearing, there was some discussion about whether such a database or registry should be public. RESA supports making such a registry public or at a minimum available to transmission and subtransmission customers, CEPs, aggregators and brokers. MREA commented that all transmission and subtransmission customers and the names of all their affiliates who choose to opt out should be listed on the Commission’s website.

Because of the notification requirement in the amended rule, the Commission will have a list of all customers that have made an election, or subsequent rescission, pursuant to this section of the rule. The Commission will open a docket for purposes of customer notifications pursuant to this section of the rule. However, a decision on whether this list should be public cannot be made upon the information in the record of this proceeding. Accordingly, the Commission will initiate a process on whether this list of customers should be public.
7. Qualified Hydroelectric Output (Section 3(H))

Section 3(H) establishes certain requirements for facilities certified as providing qualified hydroelectric output. This provision prohibits these facilities from seeking to acquire or transfer Class I or Class IA RECs associated with generation in excess of the limits specified in Section 2(W) of the rule. Any excess generation above the statutory limits will qualify for the Class II portfolio requirement.

The GEO suggested that the Commission work with the affected generators and the NEPOOL GIS System Administrator to assess how the GIS System may be used to track and limit the RECs from the qualifying hydroelectric facilities. Discussions between Commission Staff, affected generators, and GIS System personnel have occurred and accommodations are currently underway for the GIS System to track the output from qualified hydroelectric units and produce RECs accordingly. Once the limit is reached, generation from qualified hydroelectric output will revert to Class II.

The Commission also noted that the definition of qualified hydroelectric output in the Act states that the hydroelectric generator is interconnected to an electric distribution system located in the State. The Commission sought comment on whether this provision excludes hydroelectric generators located outside Maine or generators that are located in Maine but interconnected at transmission and subtransmission voltage.

CLF commented that the definition in the Act and the proposed rule does not expressly exclude hydroelectric generators located outside Maine. Brookfield and GEO commented the intent was to restrict eligibility to in-state facilities and eligibility should not be restricted based on voltage. Brookfield, TNC and MREA stated that the legislative intent was to allow Class I and Class IA eligibility to two Maine facilities that would not otherwise be Class I or Class IA eligible: Harris station and the Rumford Falls Project. TNC also commented that the intent was to limit facilities to in state and located outside of historic sea-run fish habitat. The habitat criteria are only relevant to facilities located in Maine and, therefore, TNC asserts allowing facilities located outside of Maine to qualify for Class IA would circumvent the habitat criteria and run counter to the intent of the law. TNC also commented that the intent of the term distribution system was to allow generators that are physically interconnected in Maine to qualify, whether they are interconnected at the transmission, subtransmission or distribution voltage.

The Commission agrees with commenters and interprets the statutory language to include facilities that are interconnected to the system of a Maine transmission and distribution utility regardless of whether connected to the system at transmission, subtransmission or distribution voltage. However, the adopted rule maintains the language contained in the Act.
D. Eligible Resource Requirement; Class II (Section 4)

Section 4, consistent with the Act, establishes for the purposes of meeting the Class II requirement, a 300% multiplier 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 Department of Environmental Protection (DEP). Pursuant to the Act, this provision is effective as of January 1, 2020 and repealed as of January 1, 2025. The Commission requested comment on whether the multiplier provision applies only to facilities located in Maine that have received a Maine DEP license or facilities located in other states that have obtained similar environmental licenses.

GEO, MREA, Brookfield and TNC commented that, based on discussions during the legislative session, they believe the intent of the Legislature was to limit this provision to facilities that have received a license from the Maine DEP. Similarly, CLF commented that the multiplier does not address facilities located in other states that have obtained similar environmental licenses and that to avoid legal challenges based on arguments that those provisions violate the dormant Commerce Clause of the United States Constitution, the multiplier provision should not be modified. RESA supports extending the multiplier to facilities outside of Maine to reduce the impact to customers.

The Commission agrees with the majority of commenters that the language in the Act was intended to refer to the Maine DEP and the amended rule makes that clear.

Contrary to other provisions of the Act, the provisions related to Class II portfolio requirement does not specify that implementing rules are routine technical rules pursuant to Title 5, Chapter 375, subsection 2-A and the existing language states that such rules are major substantive. The Commission requested comments on whether the 300% multiplier provision begins on the effective date of the Act (September 19, 2019), January 1, 2020, when other provisions of the Act take effect; or the effective date of legislation approving the major substantive rules.

NRCM commented that the effective date should be January 1, 2020 acknowledging that the provision will not take full legal effect until the major substantive rules are approved by the Legislature. NRCM stated that there are important policy and economic connections between the multiple changes to the RPS in the Act, and using a single effective date ensures balanced market provisions. More specifically, NRCM stated that the Act allows existing resources that meet the definition of qualified hydroelectric, which currently qualify only under Class II, to be used in Class IA. NRCM believes it was the legislative intent for the increased supply of Class II resources through the multiplier provision to take effect at the same time the supply of Class II is reduced by re-classification of hydroelectric resources, January 1, 2020, and that this would minimize short-term demand-supply imbalance and market volatility. The GEO commented that this is a reasonable approach. MREA also commented that the legislative intent was for the multiplier to apply as of January 1, 2020. The Commission agrees that the effective date for the multiplier provision was intended to be January 1, 2020 and the amended rule makes that clear.
E. Provider Obligations (Section 5)

Section 5 specifies a variety of obligations that retail electricity providers have with respect to the portfolio requirements of the rule. The proposed rule makes language changes to incorporate the new Class IA portfolio requirement. No one commented on this provision of the rule and the amended rule is unchanged from the proposed rule.

F. Verification; Reporting (Section 6)

Section 6 contains the provisions for compliance reporting and verifications. The proposed rule made changes to incorporate the new Class IA resource requirement to reflect that for service in the NMISA area, verification of compliance with the portfolio requirement must be through eligible NAR certificates.

ReEnergy commented that this is unnecessarily restrictive to CEPs in demonstrating compliance stating that a Class IA REC generated by an eligible resource should be valid for use by a CEP regardless of the physical location of the electricity delivered. ReEnergy states that the State’s renewable goals would be most efficiently served by allowing CEPs serving in any territory to demonstrate compliance by any combination of RECs minted by GIS and NAR. The GEO agreed that the rule should be clarified to make clear that ISO-NE GIS certificates or NMISA NAR certificates may be used to meet RPS requirements anywhere in the State. The Commission agrees and has added language to the amended rule to clarify this point.

G. Non-compliance; Sanctions (Section 7)

Section 7 of the amended rule contains the provisions for non-compliance and resulting sanctions. These provisions already exist in the current rule. The amended rule makes changes to incorporate the new Class IA resources requirement and reflect that for service in the NMISA area, verification of compliance with the portfolio requirement must be through eligible NAR certificates. The amended rule is unchanged from the proposed rule.

H. Waiver or Exemption (Section 8)

Section 8 of the amended rule contains the Commission’s standard waiver and exemption provision. The amended rule is unchanged from the proposed rule.

V. CONSUMER-OWNED UTILITY APPLICABILITY

The Commission sought comment on whether, under current law, Maine’s RPS requirements should apply to consumer-owned utilities (COUs) that provide standard offer service or other retail electricity sales within their service territories. The Commission noted that historically, COUs have not been required to obtain a CEP
license from the Commission prior to providing service and have not been required to comply with Maine’s RPS.

KLPD, HWC, EMEC, IECG and GEO agreed with the Commission’s historical interpretation and believe it should continue to be maintained by the Commission. MREA stated that there was no discussion at the Legislature of the RPS requirements now applying to COUs and that this indicated to them that the expectation was that the current exemption would remain in place. The amended rule does not change the Commission’s historical interpretation on this issue.

VI. ORDERING PARAGRAPHS

Accordingly, the Commission

ORDERS

1. That the amendments to Chapter 311 – Portfolio Requirement Rule- as described in the body of this Order and as set forth in the amended Rule which are routine technical are hereby adopted and the amendment which is major substantive is provisionally adopted;

2. That the Administrative Director shall file the amended Rule with the Secretary of State;

3. That the Administrative Director shall notify the following of the adoption of the amended rule:

   a. All transmission and distribution utilities in Maine;

   b. All persons that filed comments or are on the notification list in this proceeding;

   c. All persons who have filed with the Commission a written request for notice of rulemakings within the past year; and

   d. All licensed competitive electricity providers.

4. That the Administrative Director shall send a copy of the amended Rule to the Executive Director of the Legislative Council, 115 State House Station, Augusta, Maine, 04333-0015.
Dated at Hallowell, Maine, this 8th day of November, 2019

BY ORDER OF THE COMMISSION

/s/ Harry Lanphear

Administrative Director

COMMISSIONERS VOTING FOR: Bartlett
                                      Davis

COMMISSIONERS ABSENT: Williamson