I. SUMMARY

Pursuant to this Order, the biomass-powered generation facility of ReEnergy Ashland LLC located in Ashland, Maine is certified as a Class I New Renewable Resource that is eligible to satisfy Maine’s new renewable resource portfolio requirement pursuant to Chapter 311, § 3(B) of the Commission’s rules.

II. BACKGROUND

A. New Renewable Resource Portfolio Requirement

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

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

The implementing rules designated the “new” renewable resource

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1 Maine’s electric restructuring law, which became effective in March 2000, contained a portfolio requirement that mandated that at least 30% of the electricity to supply retail customers in the State come from eligible resources, which are either renewable or efficient resources. 35-A M.R.S.A. § 3210(3). The Act did not modify this 30% requirement.
requirement as “Class I”\(^2\) and incorporated the resource type, capacity limit, and the vintage requirements as specified in the Act. The rules thus state that a new renewable resource used to satisfy the Class I portfolio requirement must be of the following types:

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

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

1) renewable capacity with an in-service date after September 1, 2005;

2) renewable capacity that has been added to an existing facility after September 1, 2005;

3) renewable capacity that has not operated for two years or was not recognized as a capacity resource by the ISO-NE or the NMISA and has resumed operation or has been recognized by the ISO-NE or NMISA after September 1, 2005; or

4) renewable capacity that has been refurbished after September 1, 2005 and is operating beyond its useful life or employing an alternate technology that significantly increases the efficiency of the generation process.

Chapter 311, § 3(B)(4) of the Commission’s rules establishes a certification process that requires generators to pre-certify facilities as a new renewable resource under the requirements of the rule and provides for a Commission determination of resource eligibility on a case-by-case basis.\(^3\) 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

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

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

B. Petition for Certification

On October 21, 2016, ReEnergy Ashland LLC (ReEnergy or the Company) filed a petition to certify its biomass-powered generation facility located in Ashland, 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, ReEnergy supplemented its petition with confidential documents on October 24, 2016. As required by our rules, the Commission provided interested persons with an opportunity to comment on ReEnergy’s petition. No comments were received.

According to the petition, the 39 MW Facility, which utilizes biomass as the primary fuel, has been refurbished and is operating beyond its previous useful life. Under previous ownership, the commercial operations of the Facility began in November 1993 and ceased on March 1, 2011 when market conditions made continued operations economically unviable. On December 20, 2011, ReEnergy acquired the Facility and resumed its operations on October 22, 2014 after making a number of investments that the Company characterizes as refurbishments.

ReEnergy lists these investments in its petition, all of which were capitalized for federal tax purposes. Examples of the investments in the Facility that ReEnergy identified include re-commissioning of the boiler soot blower system, work to the steam turbine generator, the design and installation of a new soft start breaker, refurbishment of the steam and condensate systems, refurbishment of the feed water and circulating water systems with a focus on pump and valve rebuilds, and refurbishment of the instrumentation and control system. ReEnergy also identified expenditures made in bulldozers used at the Facility, but acknowledges that such investments in “stand-alone” and “independent” equipment have been previously rejected by the Commission from consideration as refurbishment expenditures. In ReEnergy’s petition, the bulldozer investments are included within the general category of fuel processing system, towards which the Company has spent [redacted]. ReEnergy’s total claimed refurbishment investments, all of which have been capitalized for tax purposes, amount to [redacted]. Finally, ReEnergy requests that the certification be effective as of the petition date.

III. DECISION

After considering ReEnergy’s petition, the Commission finds that ReEnergy’s Facility has been refurbished and is operating beyond its useful life pursuant requirements of Chapter 311, section 3(B)(3)(d), and therefore qualifies as a Maine Class I New Renewable Resource. The Facility is a biomass generator with a nameplate capacity less than 100 MW. The remaining requirements for certification under the refurbishment vintage prong are discussed below.

A. Vintage

ReEnergy 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).

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

5 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).
made for the purpose of repair or maintenance or for investment in equipment or facilities. *Covanta*, 2012 ME 74, ¶¶ 17, 19.

ReEnergy’s current petition is analogous in many significant respects to another presented by the Company on behalf a similar facility in Fort Fairfield, which was approved by the Commission in an order issued in 2013. *ReEnergy Fort Fairfield LLC Request for Certification for RPS Eligibility*, Docket No. 2011-00374, Order Granting New Renewable Resource Certification at 8 (June 14, 2013) (hereinafter, Fort Fairfield Order). There the Commission approved certification for the Fort Fairfield facility, also a biomass-powered generation facility, under the refurbishment prong of the RPS statute.

Although the Commission ultimately found that the Fort Fairfield facility had been refurbished, it rejected several claimed refurbishment investments. For instance, the Commission found that a regularly occurring turbine overhaul constituted routine maintenance and repair and that investments in a bulldozer and loader used at the facility were not refurbishments of the facility because they “are stand-alone pieces of equipment, not physically attached to the facility, that can operate independently of the facility, and that have monetary value separate and unrelated to the value of the facility.”

Further, in finding that the Fort Fairfield facility was operating beyond its useful life of twenty years, the Commission defined useful life broadly, such that it “includes a facility’s ability to continue operating in the market.” In addition, an inability to operate in the market may due to “the economics of operating the plant in the competitive market.”

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. As is clear from ReEnergy’s petition and supporting documents, the Facility would have been unable to resume reliable and efficient operations without the benefit of the capital expenditures identified by the Company. In such a context, it would be difficult to characterize as routine maintenance or repair any capital investments necessary for the resumed operation of a facility that has been idle for several years. Therefore, without making a finding on whether each of the projects included in ReEnergy’s filing independently meets the definition of a refurbishment investment, we find that the nature, character, and scope of the Company’s investments in the Facility in the aggregate go beyond routine maintenance or repair.
This determination holds even after removing ReEnergy’s bulldozer investments from consideration, consistent with the Fort Fairfield Order. ReEnergy does not specify what portion of the $ of fuel processing investments is specifically attributable to stand-alone and independent equipment. However, even if that entire amount were stripped from the total capital expenditures of $, ReEnergy has still invested $ into the Facility. This remains a significant amount that may be considered refurbishments, particularly under the circumstances that exist in this case.

Further, the investments made in the Facility would appear to conform with the purpose of the refurbishment provision, as characterized by the Law Court, to encourage the preservation of older existing renewable generation facilities. Without the aid of ReEnergy’s investments, the Facility would have been unable to resume reliable operations after years of inactivity. Accordingly, the aggregated refurbishment investments are sufficient to certify the renewable-based electrical generation derived from the Facility as consistent with the statutory definition of a generation facility that has been refurbished after September 1, 2005.

ii. Operating Beyond the Facility’s Previous Useful Life

ReEnergy seeks qualification of its investments under the useful life sub-prong of the refurbishment vintage category, arguing that the previous useful life ended after approximately seventeen years when the Facility could no longer operate economically. Petition at 5. The Facility is now approximately twenty-three years old.

ReEnergy’s theory as to the useful life of the Facility appears consistent with the Commission’s analysis in the Fort Fairfield Order. Further, in that order and others issued by the Commission reviewing similar biomass generation plants, we have found the useful life of such facilities to be twenty years, independent of their economic viability. Therefore, consistent with these past orders, we find that the Facility is operating beyond its previous useful life.

Accordingly, the Commission

ORDERS

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

2. ReEnergy Ashland LLC, or the Facility’s successive owner, shall provide timely notice to the Commission of any material change in the character or operation of the Facility from that described in the petition filed in this proceeding.

3. The certification granted by this Order is effective as of October 21, 2016.

Dated at Hallowell, Maine, this 12th day of January, 2017.

BY ORDER OF THE COMMISSION

/s/Harry Lanphear

Harry Lanphear
Administrative Director

COMMISSIONERS VOTING FOR: Vannoy
Williamson

COMMISSIONER ABSENT: McLean
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.