I. SUMMARY

Pursuant to this Order, the Dwight Project, a 1.464 MW run-of-river hydroelectric project located along the Chicopee River in the City of Chicopee in Hampden County, Massachusetts and owned by petitioner Essential Power Massachusetts, LLC (Essential Power), 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, section 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 November 23, 2016, Essential Power filed a petition to certify its Dwight Project as a Class I New Renewable Resource under the resumed operations provision of the Commission’s renewable portfolio rules. Ch. 311, § 3(B)(3)(c). Pursuant to Commission rules, an opportunity for comment was issued on December 5, 2016. No comments were received. The Commission Staff issued an information request on January 13, 2017 requesting documents identified by Essential Power in its petition and requesting clarification regarding the previous useful life of the Dwight Project. Essential Power filed its responses on January 27, 2017.

According to the petition, the Dwight Project’s dam was constructed around 1860, with the hydro-electric components added in 1920 and initial commercial operations beginning shortly thereafter. The Dwight Project ceased commercial operations on October 10, 2013 as a result of a failure of one of its penstocks and resumed commercial operations on January 26, 2016, after what Essential Power characterizes as “a multi-year, multi-hundred thousand dollar refurbishment.”

Essential Power maintains that its efforts to bring the Dwight Project back to commercial operations constitutes a refurbishment in accordance with Chapter 311, section 3(B)(3)(d). The failure of the then 90 year old penstock caused flooding of the Dwight Project’s powerhouse, damaging equipment and requiring repair. Additionally, like the penstock, much of the Dwight Project’s generating equipment and major components had been in service for many years. To support its assertion, Essential Power provided a list of claimed refurbishment expenditures. Finally, Essential Power states that the Dwight Project is in compliance with all relevant fish passage requirements.

III. DECISION

After considering Essential Power’s petition and the additional information provided by Essential Power in response to Staff’s questions, the Commission finds that the Dwight Project satisfies the resource type, capacity limit, and vintage requirements of Chapter 311, section 3(B)(3)(c), and therefore its full output qualifies as a Maine Class I New Renewable Resource. The Dwight Project is a hydroelectric generator that meets all fish passage requirements (Essential Power represents that the Dwight Project is currently in compliance with all relevant fish passage requirements, and the documents supplied by Essential Power and reviewed by Staff do not present any evidence to the contrary). Additionally, the total capacity of the Dwight Project does not exceed 100 MW. Finally, Essential Power’s Dwight Project has been refurbished and is operating beyond its useful life, as explained below.
A. **Vintage**

Essential Power 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).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.

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

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4 The Commission interprets this language as making “explicit the Commission’s existing practice of disregarding investments made for routine maintenance and repair when looking at whether a facility has been refurbished.” *Verso Bucksport LLC, Request for Certification for RPS Eligibility*, Docket No. 2011-102, Order Granting New Renewable Resource Certification at 7, fn. 10 (Nov. 23, 2011).
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.

Essential Power has provided a confidential list of claimed refurbishment projects that were necessary to modernize the Dwight Project and return it to commercial operations, following the penstock failure in 2013. Without divulging confidential elements of Essential Power’s submission, the Dwight Project has received hundreds of thousands of dollar of refurbishments, as represented in the petition. We do not make a finding on whether each of the projects included in Essential Power’s filing independently meets the definition of a refurbishment investment. Rather, we find that the nature, character, and scope of Essential Power’s investments in the Dwight Project in the aggregate go beyond routine maintenance or repair. The aggregated refurbishment investments are therefore sufficient to certify the renewable-based electrical generation derived from the Dwight Project 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

Essential Power seeks qualification of its investments under the useful life sub-prong of the refurbishment vintage category, stating that the “previous useful life of the Facility ended on October 10, 2013 when the Dwight Project ceased operations due to a failure of one of its penstocks” and that the Dwight Project was approximately 93 years old at that time. According to the petition, the dam was built around 1860 and the hydro-electric facilities were added in 1920. The Commission has determined that useful life is a broadly defined term that can include the initial design, service, accounting, or economic life of a facility. The Commission has also determined that hydroelectric facilities with dams over 100 years were operating beyond their useful life. Therefore, due to the combination of the age of the Dwight Project’s dam, the age of its generation equipment, and the penstock failure, we find that the Dwight Project is operating beyond its previous useful life.

Accordingly, the Commission

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ORDERS

1. That the electrical generation of the Dwight Project is certified as a Maine Class I New Renewable Resource; and

2. That Essential Power, 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 Essential Power 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 8th day of March, 2017.

BY ORDER OF THE COMMISSION

/s/Harry Lanphear

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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.