

August 9, 2019

MAINE PUBLIC UTILITIES COMMISSION
Amendments to Portfolio Requirement Rule
(Chapter 311)

NOTICE OF RULEMAKING

BARTLETT, Chairman; WILLIAMSON and DAVIS, Commissioners

I. SUMMARY

Through this Notice, the Commission initiates a rulemaking proceeding to amend our portfolio requirement rule (Chapter 311) to implement recently enacted legislation.

II. BACKGROUND

Maine currently has two portfolio requirements: 1) a new renewable capacity resources requirement (referred to as Class I); and 2) an eligible resource requirement (referred to as Class II). Maine's original restructuring legislation included a 30% eligible resource portfolio requirement that became effective in 2000 (35-A M.R.S. § 3210(3)). In 2007, the Legislature enacted a "new" renewable resource portfolio requirement that defines eligibility as a renewable resource that began service, resumed operation or was substantially refurbished after September 2005 (35-A M.R.S. § 3210(3-A)). The percentage requirement started at one percent in 2008 and increased in annual 1% increments until it reached 10% in 2017. The issue of what percentage requirement would exist after 2017 was raised in the 2007 rulemaking proceeding to implement the statute and the Commission concluded that the legislative intent was that, once the requirement reached 10% in 2017, it would remain at 10% thereafter unless changed by the Legislature.¹ During the 2017 legislative session, Section 3210(3-A) was amended to provide that the Class I 10% requirement would continue through 2022.²

On June 26, 2019, the Governor signed L.D. 1494, An Act To Reform Maine's Renewable Portfolio Standard (Act).³ The Act becomes effective September 19, 2019. The Act makes several changes to Maine's renewable portfolio requirements. It makes 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 a new thermal renewable energy resource requirement. It also applies a 300% multiplier for the output of a generator fueled by municipal solid waste in conjunction with recycling in Class II. Proposed changes to the rule are routine technical pursuant

¹ *MPUC Amendments to Portfolio Requirement Rule (Chapter 311)*, Order Adopting Rule and Statement of Factual and Policy Basis, Docket No. 2007-00391, p. 3 (Oct. 22, 2007) and *MPUC Chapter 311: Portfolio Requirement*, Section 3(A)(10).

² P.L. 2017, c. 291.

³ P.L. 2019, c. 477. The Commission has attached the Act to this Notice.

to Title 5, chapter 374, 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 II-A. The Commission notes that the thermal renewable energy resource requirement does not begin until 2021 and the rule amendments related to the thermal renewable resource requirement will be conducted in a subsequent rulemaking proceeding.

III. PROPOSED RULE PROVISIONS

A. Purpose (Section 1)

Section 1 of the proposed rule updates the purpose of this rule to reflect statutory changes made to the 35-A M.R.S. § 3210(1) since the rule was last amended. The proposed rule states that the purpose is to encourage the generation of electricity from renewable and efficient sources and to diversify electricity production on which residents of this State rely.

B. Definitions (Section 2)

Section 2 of the proposed 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 proposed rule contains the statutory definition of the facilities that are eligible for the three classes of portfolio requirements required under Maine law.

Moreover, the proposed rule adds definitions of the Northern American Renewables Registry (NAR), and NAR certificates, which relate to renewable attribute trading for facilities located in northern Maine. Finally, the proposed rule moves definitions that are in Section 4 of the current rule to the definitions section, Section 2.

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

Section 3 of the proposed rule contains the newly enacted Class 1A renewable resource requirement.

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

Sections 3(A) and 3(B) of the proposed rule contain the statutory schedule for percentage requirements for Class I which is 10% each year and Class IA which begins at 2.5% in 2020 and increases to 40% in 2030 and each year thereafter. Consistent with the Act, the scheduled increases for Class IA can be suspended by the Commission pursuant to the provisions of section 3(E) of the proposed rule (discussed below). 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.

2. Commission Certification (Section 3(C))

Section 3(C) of the proposed rule makes language changes to reflect the certification requirements with respect to Class IA eligible facilities. This section specifies that a facility must be specifically certified as a “qualified hydroelectric” facility to participate in the Class I and IA portfolio requirements.

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

Maine’s statute allows competitive electricity providers 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 rate by January 31st of each year and to 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 \$50.00 per megawatt-hour.

Section 3(D) of the proposed rule contains the provisions governing the ACM. The provision contains the statutory maximum amount of \$50.00 per megawatt-hour. This section also updates the language regarding the Energy Efficiency and Renewable Resource Fund to reflect statutory changes made since the rule was last amended.

The Commission notes that Maine Class 1 eligible renewable energy credits are currently trading at levels that are well below \$50.00 per megawatt-hour. Given this, the Commission requests 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.

4. Suspensions (Section 3(E))

Consistent with the Act, Section 3(E) of the proposed rule 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 alternative compliance payment mechanism.

This section also provides that by March 31st of 2022 and every two years thereafter, the Commission may suspend all or some of the scheduled percentage increases in the Class IA requirement if the Commission determines that the investment in Class IA resources in the preceding two years has not been sufficient for CEPs to meet the Class IA portfolio requirement and that the resulting use of renewable energy credits or the alternative compliance payment mechanism, or both of these methods, has burdened electricity customers without providing the benefits of Class IA resources. The rule also provides that if scheduled increases are suspended, the Commission may resume increases in the Class I or Class IA requirements that are limited to no more than 1% per year over the previous year. This section of the

proposed rule also deletes language regarding an annual portfolio reporting requirement to the Legislature which does not need to be in the rule.

5. Exemption (Section 3(F))

This section of the proposed 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 requests comments on whether the rule should contain a definition of “supply contracts.” For example, should the exemption apply to a renewal or extension of an existing contract?

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

Consistent with the Act, Section 3(G) of the proposed rule creates options for electricity customers that receive service at the transmission or subtransmission voltage level (referred to as a large customer) to elect that its supply service not be subject to the Class IA resource portfolio requirement. The large customer must provide the Commission with notice of the election. The election is effective upon submission of notice to the Commission. The election to opt out must be made no later than December 31, 2019 and the election applies through December 31, 2027, unless rescinded earlier in accordance with this subsection.

The large customer may rescind its election with respect to the Class IA requirement by providing notice to the Commission. The election is rescinded 6 months after the date of notice provided to the Commission. Under the proposed rule, it is the obligation of the large customer to notify its supplier of an election to opt-out or of a decision to rescind the opt-out election.

As specified by the Act, when the election is in effect, all retail sales of electricity to that customer are exempt from the Class IA requirement and no electricity generation, GIS certificates or NAR certificates produced by the customer’s generation may be used or applied to satisfy the Class IA requirement.

The Commission requests comment on whether a large 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.

The Commission also requests comment on whether the proposed rule should specify that a generator that is a corporate affiliate of a large 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. If so, the Commission requests comment on whether the rule should contain a definition of “affiliate” for these purposes.

7. Qualified Hydroelectric Output (Section 3(H))

Section 3(H) of the proposed rule establishes certain requirements for facilities certified as providing qualified hydroelectric output. These facilities are required to submit monthly reports containing the output of the facility. The provision also prohibits these facilities from seeking to acquire or transfer RECs associated with generation in excess of the limits specified in Section 2(U) of the proposed rule, and that upon a determination and notification by the Commission that the aggregate limit of production from qualified hydroelectric output has been reached for a particular year, facilities certified as providing qualified hydroelectric output shall not seek to acquire or transfer GIS or NAR certificates associated with generation from qualified hydroelectric output. The Commission seeks comment on specific suggestions to implement the limitations regarding qualified hydroelectric output.

The Commission notes 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 seeks 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.

D. Eligible Resource Requirement; Class II (Section 4)

Section 4 of the proposed rule, 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. Pursuant to the Act, this provision is repealed January 1, 2025.

Contrary to other provisions of the Act, the Class II section 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 rules. The Commission requests comments on whether the 300% multiplier provision begins on the effective date of the Act (Sept. 19, 2019); January 1, 2020 when other provisions of the Act take effect; or the effective date of legislation approving the major substantive rules.

As stated above, the Act states that the 300% multiplier applies to facilities that have obtained a solid waste facility license from the Department of Environmental Protection (DEP). The Commission requests 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.

E. Provider Obligations (Section 5)

Section 5 of the proposed rule specifies a variety of obligations that retail

electricity providers have with respect to the portfolio requirements of the rule. Generally, the obligations already exist in the current rule. The proposed rule makes language changes to incorporate the new Class IA portfolio requirement.

F. Verification; Reporting (Section 6):

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

G. Non-compliance; Sanctions (Section 7):

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

H. Waiver or Exemption (Section 8):

Section 8 of the proposed rule contains the Commission's standard waiver and exemption provision.

IV. CONSUMER-OWNED UTILITY APPLICABILITY

The Commission requests 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.

Maine's portfolio requirement is contained in Title 35-A MRS section 3210. Subsections 3 and 3-A state that as a condition of licensing pursuant to section 3203, each competitive electricity (CEP) provider in this State must comply with the RPS. The statute's CEP licensing requirement defines a CEP as an entity selling electricity to the public at retail. 35-A MRS section 3201(5). Unlike Maine's investor-owned utilities, COUs are explicitly permitted by statute to provide standard offer or other retail service within their service territories. 35-A MRS section 3207.

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. The Commission requests comment on whether this is a correct interpretation of law given the underlying public policy of the RPS.

V. RULEMAKING PROCEDURES

This rulemaking will be conducted according to the procedures set forth in 5 M.R.S. §§ 8051-8071. A public hearing will be held on the proposed rule on September 12, 2019 at 10:00 am at the Maine Public Utilities Commission, 101 Second Street, Hallowell, Maine 04347. Please notify the Commission if special accommodations are needed in order to make the hearing assessable to you by calling 207-287-3831 or TTY 1-800-437-1220. Requests for reasonable accommodations must be received at least 48 hours before the scheduled event.

Written comments on the proposed rule should be filed using the Commission's case management system. Comments may be filed until September 25, 2019. However, the Commission requests that comments be filed by September 9, 2019, to allow for follow-up inquiries during the hearing; supplemental comments may be filed after the hearing. Written comments should refer to the docket number of this proceeding, Docket No. 2019-00177. All comments will appear in the Commission's case management system which is accessible from the Commission's website.

In accordance with 5 M.R.S.A. § 8057-A(1), the fiscal impact of the proposed rule is expected to be minimal. Further, it is not expected to impose an economic burden on small businesses.

Accordingly, the Commission

O R D E R S

1. That the Administrative Director shall notify the following of this rulemaking proceeding:
 - a. All transmission and distribution utilities in the State;
 - b. All persons who have filed with the Commission within the past year a written request for notice of rulemakings;
 - c. All licensed competitive electricity providers; and
 - d. Those who testified on LD 1494, An Act To Reform Maine's Renewable Portfolio Standard (P.L. 2019, c. 477), during the 2019 legislative session, and
 - e. All persons on the Commission's RPS Service List.
2. That the Administrative Director shall send notice of this rulemaking and the attached proposed rule to:

- a. The Secretary of State for publication in accordance with 5 M.R.S.A. § 8053(5); and
- b. Executive Director of the Legislative Council, 115 State House Station, Augusta, Maine 04333-0115.

Dated at Hallowell, Maine, this 9th day of August, 2019.

BY ORDER OF THE COMMISSION

/s/ Harry Lanphear
 Harry Lanphear
 Administrative Director

COMMISSIONERS VOTING FOR:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	Bartlett
	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	Williamson
	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	Davis

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S. § 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 11(D) 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. § 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. § 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.