STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2007-391

October 22, 2007

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

ORDER ADOPTING RULE AND STATEMENT OF ACTUAL AND POLICY BASIS

ADAMS, Chairman; REISHUS and VAFIADES, Commissioners

I. SUMMARY

Through this Order, we adopt amendments to our portfolio requirement rule (Chapter 311) to implement recently enacted legislation. This legislation adds a mandate that specified percentages of electricity supply that serve Maine's consumers come from "new" renewable resources.

II. BACKGROUND

Maine's electric restructuring law, which became effective in March 2000, contained a portfolio requirement that mandates 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). 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 adds a mandate that specified percentages of electricity that supply Maine's consumers come from "new" renewable resources, which are generally renewable facilities that have an in-service date 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.

The Act requires that the Commission implement its provisions through the adoption of rules. The Act specifies that these rules are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

III. RULEMAKING PROCESS

On August 21, 2007, we issued a Notice of Rulemaking (NOR) and proposed rule that would implement the new renewable resource portfolio requirement. Consistent with rulemaking procedures, the Commission provided interested persons with the opportunity to provide written and oral comments on the proposed rule. The following interested persons commented on the proposed rule: the Independent Energy Producers of Maine (IEPM); Ed Holt & Associates (Ed Holt); Peregrine Technologies (Peregrine); Horizon Wind Energy, Iberdrola Renewable Energies USA, Noble Environmental Power and UPC Wind

Management (collectively Wind Energy Developers); Union of Concern Scientists (UCS), Natural Resources Council of Maine (NRCM); Ridgewood Power Management (RPM); and Integrys Energy Services (Integrys)[1]

III. AMENDED RULE PROVISIONS

A. Purpose (Section 1)

The amended rule changes the purpose section by deleting the specific reference to a 30% portfolio requirement and replacing it with a reference to an eligible resource and new renewable resource portfolio requirement. No one commented on this section and it is unchanged from the proposed rule.

B. Definitions (Section 2)

A definition of NMISA, which refers to the Northern Maine Independent System Administrator, has been added to the rule definition section because the term has been added to several sections of the amended rule. The definition of "Maritimes Control Area" has been deleted because the term is no longer used in the rule. The amended rule does not contain a definition of "renewable energy credit." A definition of the term is included in statute (35-A M.R.S.A. § 3210(2)(B-1)) and the statutory definition was included in the proposed rule.[2] However, the amended rule does not contain the term and instead uses the more precise terminology of GIS certificates.

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

Section 3 of the amended rule contains the newly enacted new renewable resource requirement and designates the requirement as "Class 1". The proposed rule designated the existing eligible resource requirement as Class 1 and the recently enacted new renewable requirement as Class 2. Ed Holt, Wind Energy Developers, UCS, and NRCM commented that reversing the designations would be more consistent with conventional

---

[1] All comments filed in the rulemaking can be obtained from the Commission's virtual case file on its webpage www.maine.gov/mpuc, through reference to Docket No. 2007-391.

[2] The Wind Energy Developers and UCS suggested that the Commission modify the definition of "renewable energy credit" to determine whether the sale of tradable emission rights would render the associated REC ineligible for use by a supplier for compliance. We decline to make such a modification, because the subject was not raised in the NOR and sufficient comment on the subject was not provided.

portfolio requirement class nomenclature and eligibility criteria in the other New England states. We agree and have reversed the designations from those in the proposed rule.[3]

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

Sections 3(A) and 3(B) contain the percentage requirements, and the resource type, capacity limit and vintage eligibility criteria. These requirements criteria are statutorily mandated and much of the language in the amended rule comes directly from the Act.

a. Energy Requirement

The Act defines eligible "new renewable capacity resources" by reference to the existing definition in 35-A M.R.S.A. § 3210-C (1)(C) and (E) (which governs long-term capacity and energy contracting). Although the Act refers to new renewable capacity resources, the Commissions interprets the intent of the Act to be an "energy," rather than a "capacity," requirement. Accordingly, the amended rule does not include the word "capacity" and uses the terminology "new renewable resources." Maine's existing 30% requirement and portfolio requirements in other states are energy (not capacity) requirements, and the Act does not contain any explicit direction that the new requirement should be a capacity requirement. Commenters on this issue agreed with the Commission's interpretation of the new requirement as an energy requirement.

b. Requirement Duration

Section 3(A) contains the statutory schedule of percentage requirements, which begin at 1% in 2008 and increase 1% each year until the requirement reaches 10% in 2017.[4] The IEPM, Ed Holt , Wind Energy Developers and UCS all commented that the proposed rule is unclear as to the requirement that will exist after 2017, emphasizing that market stability and requirement certainty is necessary for a portfolio requirement to serve its purpose as a catalyst for new renewable resource investment. We agree. Our view is that the Legislature intended that the new requirement would remain at 10% for the years after 2017 (unless changed by the Legislature) and we have thus added clarifying language to the amended rule.

[3] RPM commented that the requirements should be referred to "Tiers" as opposed to "Classes" to distinguish Maine's portfolio requirements from those in the other New England states. We decline to change the terminology because, as stated by the other commenters, there appears to be value in designation consistency among the New England states.

[4] These scheduled increases can be suspended by the Commission pursuant to the provisions of section 3(D) of the amended rule (discussed below).

c. Resource Type

Section 3(B)(1) of the amended rule contains the type of resources that qualify as "renewable." The language of this provision is essentially the same as that contained in the Act.[5] The Wind Energy Developers and UCS commented that the proposed rule provides no eligibility standard for biomass and that such a lack of specificity on biomass eligibility has led to considerable controversy in other jurisdictions. In particular, the commenters recommend that the Commission clarify the eligibility of facilities that use construction and demolition (C&D) waste and suggest that the Commission adopt one of the detailed definitions of biomass used in other New England states.

We decline to deviate from the statutory language which refers simply to "biomass generators" as previously modified by the Commission to include generators fueled by landfill gas. There was substantial debate on the definition of renewable resources (including whether facilities that use C&D waste should be excluded) prior to the Legislature's adoption of a modified list of renewable resources during the 2006 session. P.L. 2005, ch. 677 (codified at 35-A M.R.S.A. § 3210-C(1)(E)).[6] This modified list maintained the pre-existing reference to biomass generators that we have included the amended rule.[7] We interpret this action as not changing the prior practice of employing a broad interpretation with respect to biomass eligibility. In a 2005 report to the Legislature, the Commission discussed a variety of issues regarding biomass eligibility (including the debate over the environmental impact of using C&D waste as a fuel) and the approaches used in other states.[8] The Commission concluded that, without further legislative direction and in light of the unqualified statutory term "biomass," the Commission would adopt a relatively

---

[5] The only change to the language of the statutory list of "renewable resources" is that the biomass definition is clarified to include landfill gas. After staff provided an informal interpretation that the definition of biomass includes landfill gas, the Commission modified the language in the rule in a 2003 rulemaking proceeding. *Amendments to Portfolio Requirement Rule (Chapter 311), Order Adopting Rule,* Docket No. 2002-494 at 8 (Feb. 13, 2003). The Legislature accepted this clarification through the major substantive rule process. Resolves 2003, ch. 22.

[6] This definition of renewable resources was included in the legislation that authorized the Commission to direct utilities to enter into long-term contracts for capacity and associated energy. The Act incorporated this definition into the new renewable resource portfolio requirement by reference. P.L. 2007, ch. 403, sec. 3.

[7] The only change from the pre-existing definition of renewable resource (that was included in the original Restructuring Act for purposes of the eligible resource portfolio requirement) was the exclusion of municipal solid waste and hydro facilities that are not in compliance with fish passage requirements.

[8] *Review of Emerging Technologies As Eligible Resources Under the State's Portfolio requirement,* MPUC Report to the Legislature (February 10, 2005).

broad definition that includes all fuel derived from wood and wood byproducts (along with other organic sources).

RPM commented that language should be added to the rule that clarifies that landfill gas that is transported to a generation facility through natural gas pipelines is excluded from eligibility. We are unsure of the implications of the circumstances described in RPM's comments and therefore decline to adopt RPM's suggested language. We will, however, act to prevent the use of natural gas generation to satisfy the Maine's portfolio requirement. The question of the eligibility of such a landfill gas facility would be addressed in the Commission's certification process (see section 3(C)(1)(e), below) or through the advisory ruling process.

d. Capacity Limit

Section 3(B)(2) of the amended rule contains the 100 MW capacity limit and wind power exception to that capacity limit that is embodied in the statutory definition referenced in the Act (35-A M.R.S.A. § 3210-C (1)(C) and (E)). Section 3210-C(1)(E), in turn, references the definition of "renewable resource" contained in 35-A M.R.S.A. § 3210(2)(C). This definition contains the 100 MW capacity limit, which was amended during the 2007 session to exclude wind power from the capacity limit, P.L. 2007, ch. 293. No one commented on this provision and it is unchanged from the proposed rule.

e. Vintage Requirement

Section 3(B)(3) of the amended rule is essentially the same as the statutory language (35-A M.R.S.A. § 3210-C(1)(C)) that defines a "new" resource for purposes of the portfolio requirement. Under the statute, the categories of new renewable resources 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[9] after September 1, 2005; and 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.

The IEPM, Ed Holt, Wind Energy Developers, UCS, and NRCM commented that the language of these vintage requirements is ambiguous resulting in eligibility uncertainty. To illustrate, commenters state that the rule is unclear on whether only incremental output from an addition to an existing facility qualifies and whether a separate meter on such a facility is required. The commenters state that detailed eligibility language

[9] The language in the statute and the proposed rule included only a reference to the ISO-NE. At the suggestion of the Wind Energy Developers, we have added a reference to the NMISA because it serves a similar function as the ISO-NE in recognizing capacity resources and is thus consistent with legislative intent.

should be added to remove uncertainty, such as a requirement for separate meters and historic baseline energy calculations, specification of when the two year non-operation period must occur, and identification of a series of standards for qualification of a refurbished resource with respect to its useful life (e.g. by reference to the resulting tax basis) and the efficiency of an alternative technology. RPM commented that a fifth category of "new" resources be added to the rule that would allow energy from facilities with an in-service date prior to September 1, 2005 to qualify to the extent the energy is above historical production levels.[10]

We agree with the commenters that there may be a number of circumstances in which the statutory vintage language would be unclear with respect to new resource eligibility. However, we do not observe any ambiguity with respect to the output of added capacity (the second vintage category). The intent of the Act and the language of the rule are clear that only incremental output from added facilities would count towards the new requirement.[11] We have added language to clarify the timing of the two-year non-operation period (the third vintage category) must occur prior to September 2005.

Although we concur that the statutory language may prove ambiguous in many circumstances (especially with respect to refurbishments), we disagree with the commenters that the proper response is to add detailed language to the rule that attempts to foresee the variety of circumstances that may occur in the future. Because it is extremely difficult to predict future scenarios and we are reluctant to act beyond the statutory language, our view is that the preferable approach is to maintain the statutory language in the rule and to establish a certification process for the Commission to rule on eligibility on a case-by-case basis. Accordingly, we have added (consistent with the recommendation of the Wind Energy Developers and UCS) a new provision to the rule (section 3(B)(4)) that requires generators to pre-certify facilities as new renewable resources under the requirements of the rule. Under this provision, the Commission would resolve, based on the particular facts, the type of eligibility issues raised in the comments (such as the baseline to measure incremental output and the necessary efficiency improvements for refurbished capacity). A request for Commission certification may occur at any time so that a ruling can be obtained before a capital investment is made in a generation facility.

---

[10] In its comments, RPM stated that during a work session, the Chairs of the Utilities and Energy Committee and other members of the Committee accepted RPM's proposal to include this vintage test in the portfolio requirement legislation. RPM acknowledges that the provision was not included in the enacted law. The Commission must abide by the language contained in the actual law, rather than discussions that may have occurred during committee work sessions.

[11] Section 3(A) of the rule states that suppliers must meet the requirement with energy from a new renewable resource and section 3(B) specifies that a new renewable resource in this context is generating capacity that has been added to an existing facility after September 2005. Thus, it is clear from the language and the context that only incremental output from added facilities counts towards the new requirement.

We decline to adopt RPM's proposal for a fifth vintage category that would allow for increased production for a resource that pre-dates September 2005 to qualify as a "new" resource. The Legislature included four specific "vintage" categories and we are therefore are without authority to add a new category through a rulemaking. We note that the Legislature specifically included vintage categories that allow the incremental energy of a facility constructed prior to September 2005 to qualify if that energy comes from capacity added or refurbished after September 1, 2005.

2. Alternative Compliance Mechanism (Section 3(C))

The Act allows competitive providers to satisfy the new renewable resource portfolio requirement through an alternative compliance mechanism (ACM), and requires the Commission to set the alternative compliance rate by rule and publish the rate by January 31st of each year and to deposit all collected funds into the Renewable Resource Fund established pursuant to 35-A M.R.S.A. § 3210(6).[12] The Act states that, in setting the rate, the Commission shall take into account prevailing market prices, standard offer prices, reliance on the alternative compliance payments to satisfy the new resource portfolio requirement and investment in new renewable resources in the State in the previous calendar year.

The proposed rule specified that the payment amount will equal the number of deficient kilowatt-hours (the amount of required kilowatt-hours that is not served by eligible new resources) multiplied by the alternative compliance rate. The proposed rule also stated that the Commission would establish the alternative compliance rate by order each year by November 1st for effect in the following calendar year (rather than the January 31st date contained in the Act) upon the assumption that competitive providers need notice of the rate to plan for the following compliance year. Finally the proposed rule incorporated the statutory considerations (prevailing market prices, standard offer prices, reliance on the alternative mechanism, and investment in new renewable resources in Maine during the previous calendar year), but modified the last consideration to include investment in surrounding regions (in addition to investment in Maine) over the previous five years (rather than just the previous year) as an improved indicator of the state of renewable resource development and added the alternative compliance rates in other New England states as a required consideration.

The IEPM, Ed Holt, Wind Energy Developers, UCS, NRCM, RPM all commented that the ACM rate setting approach in the proposed rule is seriously deficient and would undermine the effectiveness of the new resource requirement. This is because the revisiting of the compliance rate each year based on a variety of considerations would create a substantial amount of uncertainty that would impede renewable resource investment. All commenters urged the Commission to adopt a more predictable approach similar to that employed in the other New England states that have comparable new resource requirements

[12] The Renewable Resource Fund was establish in the electric restructuring law to allow electricity customers to voluntarily contribute to renewable resource research and development and demonstration community projects using renewable energy technologies.

(Connecticut, Massachusetts, New Hampshire and Rhode Island). This approach is to either to establish a fixed rate or a base rate that is adjusted each year based on inflation. For comparable new resource requirements, Connecticut has a fixed rate of $55.00 per MWh, while Massachusetts, New Hampshire, and Rhode Island have inflation adjusted rates that result in a compliance rate of $57.12 per MWh for 2007. The commenters strongly recommend that the Commission adopt a compliance rate that equals or is similar to those in the other New England states. According to the commenters, a Maine rate set significantly below those of the other states will distort the REC market and simply result in Maine suppliers making alternative compliance payments rather than supporting new renewable development. This, in turn, could result in the automatic suspension of Maine's requirement under provisions of the Act discussed below. If the rate is set higher than the other states in the region, then Maine consumers would have a disproportionate burden in supporting regional renewable resource development.

We agree with the commenters that a high degree of predictability and comparability with the other New England states is crucial to stimulate new investment consistent with the purposes of the Act and we adopt the approach recommended by the commenters. In particular, we adopt the current alternative compliance rate and inflation adjustment mechanism used in Massachusetts, New Hampshire and Rhode Island. Taking into account the statutory considerations (prevailing market prices, standard offer prices, likely reliance on the ACM, and recent investment), as well as the overall state of renewable resource development in the Maine and the region and the compliance rate in other states, we adopt $57.12 per MWh (in 2007 dollars) as the base compliance rate that will be adjusted each year based on an inflation measure. The first adjustment will occur by January 31, 2008 and will adjust the $57.12 base amount by the annual change in the consumer price index during 2007. Future adjustments will occur by January 31st of each year based on the prior year's inflation rate. The January 31 date complies with the requirement of the Act, allows for the determination of the inflation measurement over the prior calendar year, and is consistent with the practice in other states.

The adoption of an ACM rate that is comparable with those throughout the New England electricity market satisfies the purposes of the Act, while balancing the impact of electricity rates on Maine consumers. As discussed in detail by the commenters, setting an ACM rate significantly below those in other New England states, based on current market conditions, would result in compliance primarily through the ACM and the ultimate suspension of the new resource requirement, while setting a higher rate would have little or no impact on renewable resource development and could unnecessarily increase electric rates in Maine.

The ACM acts as a cap on the rate impact that may result from the new renewable resource requirement. The ACM that we adopt in this rule will result in a capped rate impact of an approximately 0.4%increase over total rates for residential customers in 2008. This will grow to a capped rate impact of 4.1% in 2017 for residential customers.[13]

[13] The capped rate impact calculation is based on the assumptions of 2% annual load growth, 2% annual inflation and 2% annual increase in total electricity rates.

3. Suspensions (Section 3(D))

The Act specifies that the Commission may suspend scheduled increases in the percentage requirements if it determines that: 1) investment in new renewable resources over the preceding two years has not been sufficient and that the result is a burden on ratepayers without the benefits of new renewable development; or 2) alternative compliance payments are made in three consecutive years. The Act states that, if scheduled increases are suspended, the Commission may resume increases that are limited to no more than one percent each year. The proposed rule contained the statutory language regarding suspensions of the new resource requirement. The NOR requested comment on whether that language should be modified and on how the Commission should implement the suspension provisions.

The IEPM, Ed Holt, Wind Power Developers, UCS, and NRCM commented that the statutory language is not sufficiently specific and is ambiguous. The commenters state that only a material reliance on the ACM should trigger a suspension of new renewable resource requirement and recommend that the rule specify that that the requirement will only be suspended if there is a material overall reliance on the ACM (such as 50% of compliance through the ACM in three consecutive years). The Wind Power Developers, UCS and NRCM also stated that the requirement should not be suspended if there is significant renewable resource development in the pipeline and that the scheduled percentage increases should resume in the following years unless the Commission makes an affirmative decision that there should be further suspension.

We generally agree with the comments and have accordingly modified the provisions of the proposed rule. The amended rule specifies that the scheduled percentage increase for the following year will be suspended for one year if, in the aggregate, fifty percent of the compliance is through the ACM for three consecutive years. The amended rule also specifies that a scheduled percentage increase suspension will be only for one year and the scheduled increase will commence in the following year. Because the Act requires suspension if there is an over-reliance on the ACM for three consecutive years, we have not included language stating that a suspension would not occur based on resources that are under development. Finally, consistent with the directive in the Act, the amended rule provides that the Commission may suspend a scheduled percentage increase if by March 31st of the years 2010, 2012, 2014, and 2016 it determines that investment in new renewable resources is insufficient and that the resulting use of alternative compliance payments placers an unwarranted burden on ratepayers. The Commission anticipates that the over-reliance on the ACM as measured by the objective fifty percent standard will be the primary trigger of a percentage increase suspension and that suspensions will only otherwise be ordered upon a compelling demonstration that the new resource requirement is not serving its purposes (such as little or no renewable resource development throughout the region).

D. Eligible Resource Requirement; Class 2 (Section 4)

Section 4 of the amended rule contains the current 30% eligible resource requirement. The requirement is unchanged from that in the existing rule.[14] No one commented on this provision and it is the same as in the proposed rule.

E. Provider Obligations (Section 5)

This section of the amended rule specifies a variety of obligations that retail electricity providers have with respect to the portfolio requirements of the Chapter. Generally, the obligations already exist in the current rule, but they have been reorganized into section 5 of the amended rule with language changes to incorporate both the eligible resource and new renewable requirements. The only new provision (section 5 (D)) prohibits suppliers from using the same energy or GIS certificates to satisfy both the eligible and new resource requirements. This double-counting prohibition is included in the Act through language that states that new renewable resources used to satisfy the new resource requirement may not be used to satisfy the eligible resource requirement. 35-A M.R.S.A. § 3210(3-A)(A). The amended rule makes the double-counting provision symmetrical (applying to both portfolio requirements). It also interprets the language in the Act as applying to units of energy, not to particular generating facilities; so that energy that comes from one facility can be used to satisfy both requirements (as long of as the facility qualifies under both requirements and the same energy is not counted twice). No one commented on this section and it is unchanged from the proposed rule.

F. Verification; Reporting (Section 6)

Section 6 of the amended rule contains the provisions for compliance reporting and verification. The provisions already exist in the current rule, but they have been reorganized into section 6 of the amended rule with language changes to incorporate both the eligible and new resource requirements.

Integrys suggested that the language of the Physical Deliverability provision (section 6(D)) be modified to clarify that the portfolio requirements apply on a total state-wide basis, as opposed to the ISO-NE and NMISA sub-regions. We agree that a clarification in this regard would be useful and have changed the language in the section accordingly.

The Wind Energy Developers and UCS suggested that the proposed rule be modified so that the existing provision that allows entitlements to qualifying facility (QF) power to be used in lieu of RECs be limited to the eligible resource requirement (and not apply to the new resource requirement). This provision addresses QF entitlements that are purchased by utilities under contracts that predate restructuring and are silent on REC

[14] The amended rule moves several provisions in the eligible resource requirement section of the rule (section 3 of the existing rule) to a generally applicable “Provider Obligations” section (section 5 of the amended rule). The substance of these provisions is unchanged.

ownership. *Amendments to Eligible Resource Portfolio Requirement Rule (Chapter 311), Order Provisionally Adopting Rule,* Docket No. 2002-494 at 2-4 (February 13, 2003). We agree that the provision is not necessary with respect to "new resources" in which the right to RECs will be defined by contract and have accordingly modified the language in section 6(B)(1) (as well as a corresponding change to section 7(A)).

Finally, we have removed language from section 6(B)(1) which references reliance on our rules prior to 2002. The language has become outdated.

G. Non-Compliance; Sanctions (Section 7)

The amended rule contains essentially the same provisions for non-compliance and resulting sanctions as those in the current rule with language changes to incorporate the new resource requirement. The current rule has a "cure period" provision that allows a deficiency in the 30% requirement to be made up in the following year, as long as the provider served 20% of its load with eligible resources. This provision has been made generally applicable to both the eligible and new resource requirements by replacing the 20% criteria with two-thirds of the applicable requirement. The amended rule adds a "banking" provision that allows a supplier to use eligible RECs or energy that is excess of the portfolio requirements in one year to satisfy up to one-third of the requirements in the following year. The amended rule eliminates a provision in the current rule (and incorporated in the proposed rule) that allows for a portfolio requirement deficiency if the supplier has an interest in eligible or renewable resource that is under development and likely to be in service within two years. The amended rule also eliminates a provision in the current rule (and incorporated the proposed rule) that specifically allows for an "optional payment" sanction based on the market value between eligible resources and other resources.

The Wind Energy Developers, Ed Holt and NRCM commented that the cure period, interest in future resource development and the optional payment provisions in the proposed rule that were incorporated from the current rule are likely to encourage non-compliance, provide opportunities for gaming, and are contrary to the purposes of the Act. These commenters state that allowing a cure of a deficiency based on a contract with a facility that may not actually be developed allows for gaming and un-level competition, and the "optional payment" provision is unnecessary in that the ACM provides for an appropriate compliance cure. RPM commented that a "banking provision" should be added similar to other states that allow excess RECs in one year to be used for compliance for the following two years.

We agree that allowing a cure period based on a supplier's interest in a future development is unnecessary and possibility problematic. This provision was contained in our original portfolio rule adopted to implement the Restructuring Act and prior to the development of REC trading mechanisms. The provision has never been used, could create controversy if used in the future, and is unnecessary because the ACM is available if there is a shortage of eligible energy supply. We have, however, maintained the cure provision that allows a supplier to make up for a one-third deficiency in the following year as providing a degree of flexibility that should not impede the purposes of the Act. Similarly, we have added

a "banking" provision that allows for one-third of the requirement in a compliance year to be satisfied with excess RECs or qualifying energy from the previous year as providing an appropriate degree of compliance flexibility. Finally, as suggested by the commenters, we have deleted the optional payment language as unnecessary.

H. Waiver (Section 8)

The waiver provision in the amended rule is unchanged from the current rule.

Accordingly, we

O R D E R

1. That the amendments to Chapter 311, Portfolio Requirement, are hereby adopted;

2. That the Administrative Director shall file the adopted rule and related materials 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 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;

d. All persons who have commented in this rulemaking, Docket No. 2007-391

4. That the Administrative Director shall send copies of this Order and the attached amended rule to the Executive Director of the Legislative Council, 115 State House Station, Augusta, Maine 04333-0115 (20 copies).

Dated at Augusta, Maine this 22nd day of October, 2009.

BY ORDER OF THE COMMISSION

_____

Karen Geraghty
Administrative Director

COMMISSIONERS VOTING FOR: Adams
Reishus
Vafiades

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.

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.