

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 13-021

ELECTRIC RENEWABLE PORTFOLIO STANDARD

Adjustments to Class I and Class III Renewable Portfolio Requirements

Order Deferring Useful Thermal REC Requirement for One Year and Adjusting Class III Requirements Downward

ORDER NO. 25,484

April 4, 2013

I. PROCEDURAL HISTORY

On January 18, 2013, after reviewing the market for New Hampshire renewable energy certificates (RECs) the Commission determined that there was sufficient reason to examine whether the Class III (Existing Biomass/Methane) facilities minimum requirements should be adjusted pursuant to RSA 362-F:4, VI. According to the Commission's Order of Notice, electricity providers paid an unprecedented level of alternative compliance payments (ACPs) pursuant to RSA 362-F:10, II (c) in lieu of purchasing Class III RECs to comply with renewable portfolio standard (RPS) requirements for compliance year 2011. *See* [2012 Renewable Energy Fund Annual Report](#). The Order of Notice scheduled a prehearing conference for February 14, 2013 for purposes of hearing comment on whether it is appropriate for the Commission to adjust Class III renewable portfolio requirements.

On January 31, 2013, the Commission issued a Supplemental Order of Notice determining that, in lieu of a prehearing conference, the Commission would hold a public comment hearing on February 14, 2013 for purposes of receiving public comment regarding the appropriateness for the Commission to adjust Class III renewable portfolio requirements. The

Supplemental Order of Notice also requested comment on whether the Commission, pursuant to RSA 362-F:4, V, should accelerate or delay by up to one year, the 2013 incremental increase in Class I (New Renewable) REC requirements due to the new requirement that a certain portion of Class I RECs represent the production of useful thermal energy. *See* 2012 N.H. Laws Ch.272 (SB 218).

SB 218, which was enacted in 2012, requires electricity providers to purchase useful thermal RECs representative of 0.2 percent of their delivered electricity or make a payment of \$25 per megawatt hour in ACPs to the renewable energy fund (REF). RSA 362-F: 3 and RSA 362-F:10, II (a). SB 218 also required the Commission to implement rules to “adopt procedures for the metering, verification, and reporting of useful thermal output.” RSA 362-F:13, VI-a. The Commission determined that, due to technical challenges with thermal metering standards, the rulemaking required by the statute could not be completed in time to certify facilities for the production of useful thermal energy RECs in 2013, thus requiring electricity providers to make ACPs to comply with the new requirement for 2013.

The Office of Consumer Advocate (OCA) filed a letter with the Commission on January 30, 2013, stating its intention to participate in this docket on behalf of residential ratepayers pursuant to RSA 363:28. The following parties sought intervention: Public Service Company of New Hampshire (PSNH), Retail Energy Supply Association (RESA)¹, Wood-Fired Independent Power Producers (Wood-Fired IPPs)², Granite State Electric Company d/b/a Liberty Utilities

¹ RESA’s members include: Champion Energy Services, LLC; ConEdison Solutions; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; GDF SUEZ Energy Resources NA, Inc.; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; NRG, Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P.

² The Wood-Fired IPPs include: Bridgewater Power Company, L.P., Pinetree Power, Inc., Pinetree Power-Tamworth, Inc., Springfield Power LLC, Whitefield Power & Light Company, and Indeck Energy -- Alexandria, LLC.

(Liberty), New Hampshire Electric Cooperative, Inc. (NHEC), and New Hampshire Timberland Owners Association (NHTOA). The Commission granted all pending requests for intervention at the February 14, 2013 hearing.

The following parties made public statements during the hearing: Martin Orio, on behalf of the New England Geothermal Professional Association (NEGPA); Charles Niebling, on behalf of New England Wood Pellets, LLC (NEWP); Henry Veilleux of Sheehan Phinney Capitol Group, on behalf of Waste Management and Wheelabrator (Waste Management); and Mark Saltsman, on behalf of Concord Steam Corporation (Concord Steam). On February 26, 2013, the Rhode Island Engine Genco, LLC (RIEG) filed a late motion to intervene, stating that it sought intervention in the instant docket because of its current eligibility under the New Hampshire RPS for the Johnston I and II landfill methane gas facilities in Rhode Island.

II. POSITIONS OF THE PARTIES AND STAFF

A. Public Service Company of New Hampshire

1. Class I REC Requirements

At the public hearing, PSNH said that the authority granted to the Commission to modify Class I requirements applied to the class as a whole, and consequently, PSNH stated that it did not support accelerating or delaying the incremental change in Class I. PSNH stated that if the Commission determined that it had the authority to alter only the useful thermal REC requirements, PSNH would take no position on the advisability of delaying the increase.

In written comment, PSNH opined that the statute does not, on its face, grant authority to accelerate or delay a portion or subset of Class I REC requirements and that nothing in the statute distinguished a particular technology or source from any other within Class I. According to PSNH, RSA 362-F:4, I does not relate to any particular technology or source, but to the entire

class. PSNH argued that read on its face, and in harmony with RSA 362-F:4,VI, RSA 362-F:4,V, limits the Commission to amending requirements for the entirety of Class I, rather than a subset or portion of that class. PSNH Written Comments at 4.

In support of its argument, PSNH pointed out that RSA 362-F:3, which sets the percentage REC requirements for each class of RECs, states that useful thermal RECs are to be at a "set percentage" of the Class I requirements for each compliance year. According to PSNH, the statute also explicitly states what the set percentage "shall" be. Citing *Schiavi v. City of Rochester*, 152 N.H. 487,489 (2005), PSNH claimed that the standard rule of legislative interpretation states that the use of the word "shall" is inherently a command that requires mandatory enforcement. *Id.* at 5. Accordingly, PSNH argued that the statute limited the authority of the Commission to alter only the useful thermal REC requirement, a subpart of Class I, and that even if the Commission were to accelerate or delay the Class I totals, the percentage of useful thermal RECs must remain the same. For these reasons, PSNH concluded that a plain reading of the statute does not permit the Commission to amend only the required percentages for thermal RECs in 2012. *Id.* at 4-5.

2. Class III REC Requirements

PSNH noted that various parties suggested that the Commission should delay or otherwise postpone a decision in the instant docket in favor of pending legislation (SB 148) to correct any real or perceived problems with the Class III REC requirement. PSNH insisted that the Commission proceeding is the more suitable forum to carefully consider the state of the Class III market because SB 148 includes numerous changes to the RPS statute covering a wide spectrum of issues, and is not limited to modifying Class III RPS obligations. *Id.* at 6. Further, PSNH opined that the instant proceeding is the best forum to review the issues associated with

Class III REC requirements. Hearing Transcript of February 14, 2013 (Tr.) at 60. PSNH stated that the Commission should rely upon its authority in RSA 362-F:4, VI to take action to address the constraints in the Class III REC market. PSNH Written Comments at 7-8.

PSNH noted that for the 2011 RPS compliance year, New Hampshire electricity providers paid a total of \$19 Million into the REF and of this total, \$15.5 million was related to Class III requirements, and that PSNH alone paid over \$7 million in Class III ACPs. For compliance year 2012, PSNH said that it expects to pay a similar amount of ACPs to the REF. PSNH stated the Legislature enacted the RPS law to provide an important revenue stream to existing renewable resources but given that the current Class III eligible resources can now earn higher revenues selling RECs elsewhere, it is debatable whether the intent is being met with respect to Class III sources. PSNH pointed out that electric customers pay for RPS compliance, and argued that the Commission has an obligation to fully explore this issue, not only pursuant to RSA 362-F:4, VI, but also to ensure electric rates are just and reasonable. *Id.* at 8.

B. Retail Energy Supply Association

RESA stated that unlike traditional electric utilities, RESA members sell electricity to retail customers under fixed-term and fixed-price contracts or service agreements, rather than pursuant to tariffs and, therefore, when an RPS requirement is modified resulting in increased renewable resource requirements, the additional costs to serve retail customers cannot be passed through to customers by way of a tariff adjustment. Consequently, any acceleration or increase in the renewable resource requirements under the RPS law would economically harm suppliers and frustrate both the buyer and seller with regard to their contract expectations, unless measures are taken to avoid such economic harm. RESA stated that a sound policy, as reflected in RSA 362-F:14, would be to exempt or "grandfather" contracts executed prior to the change in RPS

requirements. RESA urged that any change considered by the Commission to adjust Class III RPS requirements should fully exempt sales made pursuant to existing customer contracts pursuant to RSA 362-F:14. RESA stated that the proposal to delay the annual percentage increase or any other reduction in the RPS resource requirements would not necessitate such an exemption, and RESA expressed no general objection to such action. RESA Written Comments.

C. Wood-Fired IPPs

1. Class I REC Requirements

The Wood-Fired IPPs took no position.

2. Class III REC Requirements

The Wood-Fired IPPs stated that the Commission should consider staying the instant docket because SB 148 adjusts Class III purchase requirements. They noted that, among other things, SB 148 would reduce the Class III purchase requirements for 2013 from 6.5% to 5.5% and for 2014 from 7% to 5.5%. The Wood-Fired IPPs hypothesized that further reductions in the 2013 and 2014 Class III percentages could occur as the bill proceeds in the Legislative process. According to the Wood-Fired IPPs, SB 148 adjusts Class III RPS requirements for compliance year 2012 and would rebate to customers any Class III ACPs in excess of \$6 million for 2012. The Wood-Fired IPPs argued that if the Commission does not stay this docket, it should address Class III percentage adjustments only for the 2013 and 2014 compliance years. Wood-Fired IPPs' Written Comments at 1-2.

The Wood-Fired IPPs stated that all six of the wood-fired plants are qualified to produce Class I RECs in Connecticut. Connecticut sets ACP for those RECs by law at a non-escalating rate of \$55 each year while the Class III ACP rate in New Hampshire for 2013 is \$31.50. The Wood-Fired IPPs said that given the substantial difference in ACP values, it is reasonable to

assume that eligible Class III wood-fired REC supply, and any potentially eligible Class III wood-fired plant, would first seek to sell its RECs in Connecticut and are not likely to produce significant, if any, Class III REC sales in in New Hampshire in the 2013-2014 timeframe. *Id.* at 2-4.

D. Granite State Electric Company d/b/a Liberty Utilities

1. Class I REC Requirements

Liberty said that it supports delaying until at least 2014 the Class I increment requiring the procurement of useful thermal RECs to allow sufficient time to develop implementing rules and to certify Class I useful thermal REC sources. Liberty argued that by delaying the first 0.2% annual increase in Class I useful thermal energy requirements, as specified in RSA 362-F:3, from 2013 to 2014, the Commission would not be modifying the subsequent incremental increases in Class I useful thermal energy requirements and would allow for the orderly development of useful thermal energy resources, as intended by the statute. Liberty opined that the Commission had the requisite authority to order a delay pursuant to RSA 362-F:4, V. Liberty Written Comments filed 2/20/13 at 2.

Liberty stated that it would not support adding the 2013 useful thermal obligation requirement to future years and stated a preference for slowly ramping-up the obligation. According to Liberty, if the Commission added the 2013 useful thermal requirements to the 2014 increment, the result may be a shortage of useful thermal RECs and an increase in ACPs. *Tr.* at 19.

2. Class III REC Requirements

Liberty stated that electricity providers could not purchase sufficient Class III certificates to meet 2011 Class III requirements, and instead made ACPs to satisfy the RPS Class III

obligation. Liberty said it expected that Class III RECs will continue to be of limited availability for the foreseeable future. According to Liberty, the likely cause of the shortage of NH Class III RECs is the higher prices offered in other REC markets such as Connecticut, Massachusetts, and Rhode Island.³

Liberty argued that while the language of RSA 362-F allows for the adjustment of the Class III requirement to a level "between 85 and 95 percent" of "available eligible resources," the problem is that there are virtually no Class III resources willing to sell RECs below the Class III ACP. Liberty claimed that raising the Class III ACP won't solve the problem and would simply increase the cost to New Hampshire's electric customers. Liberty postulated that, because the market conditions in New England are not expected to change significantly in the next couple of years, the Class III requirement should be suspended entirely until the market improved. *Id.* at 1.

Liberty also suggested other recommendations, including changing the "began operation" date from 2006 to 1997 to make New Hampshire's Class III RECs very similar to other markets, or to reduce the Class III requirement by a couple of percentage points until the market is able to catch up with the demand. *Tr.* at 32.

E. New Hampshire Electric Cooperative, Inc.

1. Class I REC Requirements

NHEC took no position.

2. Class III REC Requirements

NHEC agreed that although it did not pay 2011 compliance year ACPs for Class III requirements due to a pre-existing contract, there simply are no Class III RECs available in New

³ According to Liberty, Connecticut Class I RECs are trading in the mid-\$50 range and Massachusetts and Rhode Island Class I RECs are trading in the mid-\$60 range, while New Hampshire is trading in the \$31-\$32 range. *See Tr.* at pp. 31, 33.

Hampshire. NHEC noted that the statutory language permitting adjustment to the percentage requirements of Class III RECs indicates that the Commission can reduce the amount to “85 to 95 percent of available” RECs which, in the current circumstances would be zero. NHEC stated by paying the ACPs in lieu of procuring RECs has already resulted in increased costs to ratepayers and suggested that the costs to ratepayers should not be further exacerbated by taking any action that would increase the ACP value for Class III RECs. Tr. at. 34-35.

F. New England Geothermal Professional Association

1. Class I REC Requirements

New England Geothermal stated that it was interested, as a stakeholder, in the new thermal REC opportunity and wanted to participate to ensure its interests were being served. Tr. at p. 6.

2. Class III REC Requirements

New England Geothermal took no position.

G. New England Wood Pellets

1. Class I REC Requirements

NEWP, a manufacturer of wood pellet fuels, expressed disappointment at the prospect of delaying the implementation of rulemaking to effect the addition of useful thermal energy to the Class I renewable energy requirements. NEWP stated that it was eager for Staff to move expeditiously to develop administrative rules and suggested that more technical assistance should have been sought from stakeholders. NEWP reminded the Commission that although utilities may have to make ACPs in year one, the thermal class was structured as a carve-out from pre-existing utility obligations in Class I and set in the statute at a significantly lower ACP. NEWP

claimed that this was done intentionally by the Legislature to enable additional useful thermal energy at a lower cost to ratepayers.

NEWP expressed concern that if the process is delayed by one year, the 2013 useful thermal REC requirement would disappear. NEWP stated that if RSA 362-F:4, V authorizes the Commission to accelerate or delay, it also grants authority to allocate the 2013 useful thermal energy requirement to the 2014 requirements. NEWP recommended that the Commission allow the 2013 useful thermal energy requirement to remain unchanged, but if the Commission determined to delay the implementation of the requirement, the Commission should take steps to preserve the 0.2% requirements for 2013. NEWP suggested that the Commission add the 0.2% requirement to the 0.4% requirement for 2014, and thereby require that 0.6% of electric sales be matched by useful thermal RECs for the 2014 compliance year. Tr. at pp. 8-12.

2. Class III REC Requirements

NEWP took no position.

H. The New Hampshire Timberland Owners Association

1. Class I REC Requirements

NHTOA stated that the thermal carve-out is an opportunity to add diversity to New Hampshire's wood-using and renewable energy industries. NHTOA supported the NEWP's suggestion to add the 2013 percentage requirement for useful thermal RECs to the 2014 requirements so that the capacity is not lost. NHTOA preferred, however, that the Commission not delay the implementation of the 2013 useful thermal requirements. Tr. at 12-13.

2. Class III REC Requirements

NHTOA stated it supported the positions of Waste Management and Wheelabrator, and of the Wood-Fired IPPs. NHTOA also noted SB 148 contains a provision regarding the

adjustment of Class III REC requirements. NHTOA suggested it would be more efficient for stakeholders to work through the legislative process than to duplicate or repeat the process at a later date with the Commission. Tr. at 62-63. NHTOA also said that SB 148 would establish a study commission to create an automatic adjustment of RPS requirements in response to market changes for all REC classes. Tr. at 64.

I. Waste Management of New Hampshire, Inc. and Wheelabrator

Waste Management suggested that the Commission postpone any action regarding the ACP payments, primarily because SB 148 addresses substantially the same issues as the instant docket. Waste Management recommended that Commission staff participate as stakeholders in the Legislative process. Waste Management indicated that acting on the issues in this docket may be premature. Tr. at 36-37.

J. Office of Consumer Advocate

The OCA said that its interest in this proceeding is the rate impact on residential ratepayers. The OCA had no specific comments but stated that it would be glad to participate in any technical sessions that are held to discuss the matters this docket addresses.

K. Commission Staff

1. Class I REC Requirements

Staff said that it would be advisable to delay the implementation of Class I thermal RECs for reasons of administrative effectiveness and fairness. Staff indicated that it began working on the rules on August 3, 2012 when it held the first stakeholder meeting and requested input from interested parties on the rulemaking requirements. In addition, Staff researched metering and verification of thermal RECs, received input from various entities, and drafted rule language related to the useful thermal energy provisions and the other changes implicated by SB 218.

According to Staff, it issued a preliminary draft of the rules on December 21, 2012 and held a second stakeholder meeting on January 25, 2013.

At the January stakeholder meeting, many technical issues were raised concerning the preliminary draft rules. Staff concluded that the implementation of Class I thermal REC obligations should be delayed to allow Staff to hire a consultant to finalize the technical aspects of the rules. Staff said that the rules could not be finalized until October 2013 at the earliest.

Staff said that without rules in place, thermal facilities cannot submit applications to qualify for the production of useful thermal RECs and, consequently, electricity providers would have to pay the useful thermal energy ACP for 2013 obligations. Staff estimated that the payments in ACPs would amount to \$550,000, which is a substantial amount of money.

Staff emphasized that it does not intend to stop the rulemaking process as a result of an administrative delay but intends to finalize and build on the rules already developed with the assistance of a consultant.

Staff also opined that the Commission had legislative authority to delay the increment of useful thermal energy requirements by one year pursuant to legislative authority under the RPS law. According to Staff, the legislative intent of the statute was to provide for a method by which the Commission could delay up to one year “any given year’s incremental increase in class I renewable portfolio standards”, meaning any subset of the incremental increase in the standards. Staff opined that suspending the increment represented by useful thermal energy would be within the ambit of legislative intent if the result would be to enable the development of rules to implement the program. Staff pointed out that delaying the increase represented by the subset of useful thermal energy does not impact the RPS obligation for the remaining Class I requirements. Tr. at 14-17.

2. Class III REC Requirements

Staff did not express an opinion on Class III REC requirements.

III. COMMISSION ANALYSIS

A. Intervention Request

At the outset, we will consider the late-filed petition to intervene by RIEG. In its petition, REIG said that it is subject to the requirements of RSA 362-F:3 as the law relates to the acquisition and retirement of RECs. REIG also stated that it is affiliated with two facilities qualified to produce N.H. Class III RECs. There were no objections to RIEG's petition to intervene.

RSA 541-A:32, II grants the Commission discretionary authority to approve intervention petitions at any time upon determining that intervention would be in the interest of justice and would not impair the orderly and prompt conduct of the proceeding. Because the instant docket is of a "legislative" nature and we invited public comment on the issues of adjusting requirements for Class I and Class III RECs, we will grant REIG's petition to intervene provided that REIG takes no action that would delay this proceeding.

B. Class I REC Requirements

RSA 362-F:4,V authorizes the Commission to accelerate or delay up to one year the implementation of any incremental increase in Class I or II RPS requirements for good cause, after notice and hearing. PSNH suggested that this statutory provision only permits the Commission to suspend an incremental increase in the overall requirements of Class I, and that the statute cannot be read to authorize the Commission to suspend or delay the incremental increase represented by the subset of useful thermal energy. We note that no other parties offering comment at the hearing agreed with PSNH's interpretation of the law.

RSA 362-F:4,V states as follows:

“For good cause, and after notice and hearing, the commission may accelerate or delay by up to one year, any given year’s incremental increase in class I or II renewable portfolio standards requirements under RSA 362-F:3.

There is nothing in RSA 362-F:4,V that would indicate that the Commission only has authority to suspend or delay an incremental increase to Class I requirements in its entirety; the statute clearly refers to “any given year’s incremental increase” in Class I requirements. The 2013 useful thermal energy obligations represent a new, and hence, incremental increase, to the 2013 Class I obligations and is clearly an “incremental increase” in Class I requirements within the meaning of the statute. Therefore, in accordance with our authority under RSA 362-F:4, V, we have decided to delay the implementation of the incremental increase of the useful thermal energy portion of Class I for compliance year 2013 until compliance year 2014. Our reasoning follows.

On June 19, 2012, SB 218, the legislation which added a useful thermal energy category to Class I RPS requirements, became law. SB 218 requires a 0.2% RPS obligation for useful thermal energy under Class I for compliance year 2013. The legislation also requires the Commission to develop administrative rules setting forth the procedures for the metering, verification, and reporting of useful thermal energy. In addition, the statute does not allow the Commission to hire any new employees due to the addition of the useful thermal energy provisions. Consequently, Staff relied on the stakeholder process for technical assistance in developing the rules and especially to incorporate the metering and measurement methodologies for useful thermal energy.

Staff held an initial stakeholder meeting in August 2012 and an additional stakeholder meeting in January 2013. In addition, Staff stated that it researched thermal energy metering and

measurement, discussed the law with many stakeholders and concluded that the technical assistance of a consultant is necessary to complete the rules because no guidelines are available to assist with the rulemaking requirements of the new law. While development of these rules continues, they have yet to be finalized.

A potential source of useful thermal energy must know the application, metering, measurement, verification and reporting requirements in order to apply to qualify to produce useful thermal RECs. Without the rules to define these provisions, neither a potential useful thermal energy source, nor the Commission has the necessary information to determine whether a source is eligible to produce thermal RECs. Further, without any certified useful thermal energy sources, electric providers will have to comply by making the ACP of \$25 per MWh for the useful thermal energy obligation, and that cost will be passed on to electric ratepayers. As previously noted, the ACP represents the highest cost for complying with the RPS.

Based on the foregoing, on March 20, 2013, the Commission issued a request for proposal (RFP) for technical assistance with thermal energy metering and measurement to gather the necessary information to develop appropriate rulemaking language. Because it can take four months from issuance of an RFP to select a qualified bidder and obtain all approvals required by state law, we find that it is just and reasonable to use our authority pursuant to RSA 362-F:4, V to delay by one year the incremental increase in Class I requirements associated with the useful thermal energy obligation. As a result of this delay, the total Class I obligation for compliance year 2013 is 3.8% (4.0% minus the 0.2% of the useful thermal energy portion).

For 2014, the Class I useful thermal obligation will revert to the statutory requirement, that is, the total Class I obligation for compliance year 2014 will be 5.0%, and the useful thermal

energy increment of Class I will be 0.4%. The statute requires a useful thermal energy source to begin operation after January 1, 2013 and that date remains regardless of this delay.

C. Class III REC Requirements

Pursuant to RSA 362-F:4, VI, the Commission may modify the Class III requirements “such that the requirements are equal to an amount between 85 percent and 95 percent of the reasonably expected potential annual output of available eligible sources after taking into account demand from similar programs in other states.”

RSA 362-F provides two alternatives by which electric providers can comply with the RPS requirement: 1) the procurement of RECs, RSA 362-F:6 and 9, or 2) through ACPs, “to the extent sufficient certificates are not otherwise available at a price below” the ACPs. RSA 362-F:10, II. We are mindful that electric ratepayers ultimately pay for the cost of RPS compliance through their electric rates, and that the ACPs represent the ceiling, or highest cost, of RPS compliance. It is less costly for electric ratepayers if there are RECs available at a price below the ACP for their electric provider to purchase in the competitive market.

We have reviewed the public comment at hearing and the written comment provided following the hearing, and we find that no party disputed that New Hampshire Class III RECs are very scarce in the REC markets, primarily due to the higher REC prices (and higher ACP levels) in Connecticut and Massachusetts. We find that the lack of availability of New Hampshire Class III RECs and the unprecedented amount of ACPs deposited in the REF for compliance year 2011 (over \$15 million in ACPs for Class III alone) present good cause to modify the RPS requirements for Class III RECs, particularly given that higher RPS compliance costs result in higher rates for New Hampshire electric ratepayers. Based on the foregoing, we

find that it is just and reasonable and in the public interest to exercise our authority pursuant to RSA 362-F: 4, VI and modify Class III requirements beginning with compliance year 2012.

In determining how to modify the requirements, we will use data from 2011 to estimate the current availability of Class III RECs. Each electricity provider must submit a RPS compliance report on July 1 of each year.⁴ The reports contain myriad information including total electricity sales, RPS obligations by class, amount of RECs used to comply with each class, and the ACPs paid to comply with each renewable energy class. Based on the 2011 compliance reports, the renewable portfolio standard obligation for Class III in 2011 was met as follows: 25 percent with RECs and 75 percent with ACPs. By comparison, in compliance year 2010, less than 10% of the Class III obligation was met with ACPs. Given that stakeholders at the public hearing confirmed that Class III RECs are currently unavailable for New Hampshire RPS compliance, we find that it is reasonable to assume that 2012 RPS requirements for Class III will be met similarly to compliance year 2011. In other words, we assume that only 25% of the 2012 Class III requirements will be met by the procurement of RECs.

Given the likelihood of high ACP payments for Class III in 2012 absent modification in the Class III obligation, the Commission finds that it is in the public interest to reduce the Class III requirements. Table 1, below, presents the calculation of the new obligation for Class III in 2012 and 2013.

Table 1. Calculation of New 2012 and 2013 Class III Obligation

Year	Estimated Electricity Sales (MWh)	Current Obligation (%)	Current Obligation Estimated (MWh)	Portion met by RECs portion (%)	Portion met by RECs (Estimated) (MWh)	Statutory Adjustment	New Obligation (Estimated) (MWh)	New Obligation (Estimated) (%)
2012	10,691,548	6.5%	694,951	25%	173,738	85%	147,677	1.4%
2013	10,851,921	6.5%	705,375	25%	176,344	95%	167,527	1.5%

⁴See also [2012 Renewable Energy Fund Annual Report](#).

Based on estimates provided by the four electric distribution utilities, the total electricity sales for 2012 are estimated to be 10,691,548 megawatt hours (MWhs) as shown in the second column. The 2012 statutory RPS obligation for Class III is 6.5 percent of electricity sales, or 694,951 MWhs. In other words, electricity providers collectively would have to purchase 694,951 Class III RECs, with one REC equaling one MWh, to meet the current 2012 compliance year Class III obligation.

Using the 2011 data, we expect 25% of the Class III requirements, or 173,738 MWhs, to be met by the procurement of RECs; in other words, 173,738 MWhs constitutes the “reasonably expected potential annual output” of Class III RECs pursuant to RSA 362-F:4,VI. Consistent with RSA 362-F:2,VI, we calculate 85% of this “reasonably expected potential annual output” amount as the Class III RPS obligation for compliance year 2012, which is 147,677 MWhs or 1.4% of the total estimated electricity sales for 2012. Thus, the new RPS obligation for compliance year 2012 Class III is 1.4%.

For purposes of providing continuity to the Class III obligations, we have also determined that it is just and reasonable to modify the Class III obligation for 2013. We used the same logic as was used to determine 2012 Class III obligation, but instead of using 85% of expected output, we used 95% of the estimated output, consistent with the upper range set forth in RSA 362-F:4,VI and assuming that slightly more Class III RECs will be available in 2013 than 2012. The total estimated electricity sales for 2013 are estimated with the assumption that the annual growth of electricity sales is 1.5% (based on Independent System Operator-New England’s 2011 Regional System Plan).⁵ As shown in Table 1, the new RPS obligation for compliance year 2013 Class III is 1.5% of electric sales.

⁵ See, ISO NE 2011 Regional System Plan at <http://www.iso-ne.com/trans/rsp/2011/>. Ref. p. 28.

Based upon the foregoing, it is hereby


ORDERED, that pursuant to RSA 362-F:4, V, the Class I increment associated with the new category of useful thermal energy shall be delayed for one year until the 2014 compliance year; and it is

FURTHER ORDERED, that, pursuant to RSA 362-F:4, VI, the Class III (existing biomass) requirements for compliance year 2012 shall be 1.4% of electric sales; and it is

FURTHER ORDERED, that pursuant to RSA 362-F:4, VI, the Class III requirements for compliance year 2013 shall be 1.5% of electric sales; and it is

FURTHER ORDERED, that the intervention request of Rhode Island Engine Genco, LLC is GRANTED.

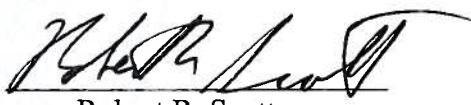
By order of the Public Utilities Commission of New Hampshire this fourth day of April, 2013.



Amy L. Ignatius
Chairman

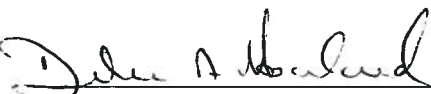


Michael D. Harrington
Commissioner



Robert R. Scott
Commissioner

Attested by:



Debra A. Howland
Executive Director