

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DE 15-035**

**ELECTRIC RENEWABLE PORTFOLIO STANDARD**

**RSA 362-F:4, VI, Adjustments to Renewable Class Requirements**

**Order Modifying Class III Requirements for 2014 and 2015 Compliance Years**

**ORDER NO. 25,768**

**March 13, 2015**

In this Order, the Commission adjusts the Class III RPS requirements for calendar years 2014 and 2015. The Commission sets the Class III RPS requirements for 2014 and 2015 at 0.5% of retail electricity sales. The Commission also denies a motion by ENH asking the Commission to investigate the price and availability of RECs in all RPS Classes.

**I. PROCEDURAL HISTORY**

By Order of Notice issued January 21, 2015, the Commission solicited comment regarding whether it should adjust RSA 362-F renewable portfolio standard (RPS) requirements, specifically, the RPS requirements for Class III (eligible biomass in operation as of 2006), for calendar years 2014 and 2015.<sup>1</sup> Pursuant to RSA 362-F:3, Class III RPS requirements for 2014 are 3% of retail sales; for 2015, the percentage requirement increases to 8% of retail sales. Providers of electricity that are required to comply with RSA 362-F achieve compliance by purchasing renewable energy certificates (RECs), one certificate representing the renewable characteristics of one megawatt hour (MWh) of renewable energy generation, or making the alternative compliance payment (ACP) specified in the statute.

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<sup>1</sup> The Order of Notice title included an erroneous reference to RSA 362-F:4,V. RSA 362-F:4,V, authorizes the Commission to delay increases in Class I requirements. The Commission intended that this proceeding only deal with Class III requirements, as is detailed in the Order of Notice.

RSA 362-F authorizes the Commission to adjust Class III RPS requirements as necessary, and consistent with the purposes of Chapter RSA 362-F. “After notice and hearing, the commission may modify the class III and IV renewable portfolio requirements under RSA 362-F:3 for calendar years beginning January 1, 2012 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:4, VI.

The Commission scheduled a public comment hearing on February 12, 2015. The Commission also allowed interested parties to provide written comments by February 23, 2015.

On February 12, 2015, Electricity NH, LLC d/b/a ENH Power (ENH) filed comments on Class III RPS requirements. In addition, ENH filed a motion asking the Commission to either expand the current docket or open another proceeding to consider modifying either the portfolio requirement or the ACP, as may be permitted by law.

## **II. PUBLIC COMMENT ON CLASS III REQUIREMENTS**

The following parties provided oral comments at the public hearing: Bridgewater Power Company, L.P., Pinetree Power, Inc., Pinetree Power-Tamworth, Inc., Springfield Power, LLC, Whitefield Power and Light Company, and Indeck Energy – Alexandria, LLC (collectively, the Wood IPPs); Liberty Utilities (Granite State Electric) Corp d/b/a Liberty Utilities (Liberty); Unitil Energy Systems, Inc. (Unitil); Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource); New Hampshire Electric Cooperative, Inc. (NHEC); ENH; Constellation Energy; the Office of Consumer Advocate (OCA); the Retail Energy Supply Association (RESA); and Energy Audits Unlimited, LLC. Written comments were provided by Liberty, Unitil, Eversource, Lisa Linowes and William P. Short III (jointly), Concord Steam

Corp., the OCA, the Wood IPPs, Hot Zero LLC, the New Hampshire Sustainable Energy Association (NHSEA), Innovative Natural Resources Solutions, LLC (INRS), and Granite State Hydropower Association (GSHA).

**A. Class III Requirements for 2014 and 2015**

Liberty said that providers of electricity in New Hampshire will not be able to purchase sufficient Class III RECs to satisfy either the 2014 or 2015 Class III requirements, and instead, will have to make substantial alternative compliance payments (ACPs) to the renewable energy fund. Liberty recommended that the Commission reduce Class III RPS requirements for 2014 and 2015 to zero.

Eversource also recommended that the Commission set the 2014 and 2015 Class III RPS requirements at zero. Eversource stated that Class III RECs have been impossible to procure in New Hampshire since approximately 2011, and that the scarcity of Class III RECs is expected to last through at least 2015. Eversource noted that the cost of RPS compliance is passed through to ratepayers. If Eversource were required to pay ACPs for the current Class III RPS requirements applicable to 2014 and 2015, the additional costs to customers would be \$3.6 million and \$14.4 million, respectively.

Unitil agreed with Liberty and Eversource regarding the recommendation to reduce Class III RPS requirements to zero for 2014 and 2015. Unitil said that market conditions for New Hampshire RECs are such that Class III RECs are being purchased by electricity providers in other states to comply with RPS requirements of those states. Unitil said that, given the current Class III requirements, the costs to ratepayers of paying the ACPs for calendar years 2014 and 2015 would equal \$746,045 and \$2,783,970, respectively.

NHEC said that, except for Class III RPS requirements, it has met its requirements for all REC classes for 2014 and 2015. Absent an adjustment to Class III RPS requirements, the costs of the ACPs for 2014 and 2015 for NHEC's members would be \$646,000 and \$2,417,000, respectively.

Lisa Linowes and William P. Short, III, also advised the Commission to reduce Class III RPS requirements to zero for 2014 and 2015.

Constellation said that there are compelling reasons to reduce the Class III RPS requirements to zero, and both Constellation and ENH echoed the distribution utilities' comment that no Class III RECs are available to comply with 2014 requirements.

RESA recommended that the Commission reduce Class III RPS requirements for 2014 to 0.25%.

The Wood IPPs<sup>2</sup> acknowledged that New Hampshire biomass plants sell their RECs in Connecticut to take advantage of the higher prices offered in that state. The Wood IPPs, however, pointed out that landfill gas is also a qualifying Class III resource and, absent any specific knowledge about the availability of landfill gas RECs for compliance with RSA 362-F:3, the Wood IPPs recommended that the Commission set the Class III RPS requirements at 0.5% for 2014 and 2015.

The OCA also expressed support for setting the 2014 Class III REC requirements at 0.5%; however, the OCA recommended that the requirements for the 2015 calendar year should be increased to between 1% and 3%. The OCA also suggested that, in the event the Commission decided that the appropriate level for Class III requirements in 2014 or 2015 should be zero, the Commission should work with the legislature to amend the RPS law.

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<sup>2</sup> The Wood IPPs are biomass-fueled generation resources.

Energy Audits Unlimited, LCC recommended that the Commission take no action to change the RPS requirements.

**B. ENH's Motion to Expand Investigation**

In its motion, ENH claimed that the market for RECs in New England lacks “liquidity, transparency and regional uniformity on the availability of RECs for all Class portfolio sources.” Motion at 2. According to ENH, as long as the market continues to fail, ratepayers will pay by having to fund the ACPs through energy service rates. To address this situation, ENH asked that the Commission either expand the current investigation or open a new investigation to consider the impact of market failure on the availability of RECs for all Class sources, and consider modifying either the portfolio requirement or the ACP, as may be permitted by law. *Id.*

RESA noted that the Commission has authority to delay an increase to Class I (new renewable) requirements pursuant to RSA 362-F:4, V. Because it is within the Commission's authority to delay increases in Class I RPS requirements, RESA supported ENH's motion insofar as the motion would investigate whether the Commission should delay the proposed increase in Class I requirements.

Constellation did not take a formal position on ENH's motion, but stated its support for a separately noticed investigation into issues regarding Class I requirements.

The Wood IPPs argued that the ENH motion should be denied because, as applied to Class III, the alternative relief requested is not authorized by RSA 362-F. Referring to the statute, the Wood IPPs noted that the law does not authorize the Commission to change percentage requirements for Class III based on the “lack of liquidity, transparency, and regional uniformity on the availability of RECs” as asserted by ENH in its motion. The Wood IPPs also pointed out that the Commission reviews the REC market and submits a report on its findings to

the General Court, pursuant to RSA 362-F:5, I, II. They recommended that the Commission defer to the review process established by the law and deny ENH's motion.

Unitil expressed support for ENH's motion. Unitil opined that it would be in the public interest to revisit all the RPS class requirements for the reasons discussed in the motion; however, Unitil recommended that a separate docket be opened to address the Class I, II and IV RPS requirements.

Eversource took no position on whether the Commission should broaden the scope of this proceeding to include the other REC classes, or whether a new docket should be opened to conduct a more comprehensive review. Whatever action the Commission takes, Eversource urged the Commission to address Class III requirements as soon as practicable.

Concord Steam Corp. recommended that the Commission deny ENH's motion. Concord Steam opposed further delaying the useful thermal Class I RPS requirements. Concord Steam noted that the Commission recently promulgated rules to qualify useful thermal Class I sources, and expressed concern about the impact on the development of a REC market if further delays were approved. INRS and Hot Zero LLC also expressed concern that the Commission not impede or delay the full implementation of those useful thermal requirements.

GSHA stated strong opposition to ENH's motion. GSHA said that it was not aware of the process by which ENH sought to obtain Class IV (small hydro) RECs in 2014, and asserted that other load serving entities generally issue requests for proposals on a regular basis to procure RECs. GSHA said that the Class IV market is operating efficiently, and there is no need at this time to review the Class IV RPS requirements or to adjust Class IV ACPs.

NHSEA objected to ENH's motion. NHSEA argued that the Commission does not have good cause to alter the Class I (new renewable) or Class II (solar) RPS requirements. Further,

NHSEA said that a decision by the Commission to proceed with the request made by ENH would send inappropriate market signals regarding New Hampshire's commitment to RPS requirements. According to NHSEA, the RPS program is working, and the fact that some electricity providers have to comply by making ACPs is not an indication of program failure. NHSEA said that the ACPs flow through the renewable energy fund, which supports the development of new projects that will produce RECs. Finally, NHSEA pointed out that the legislature, not the Commission, has the authority to modify ACP rates.

### **III. COMMISSION ANALYSIS**

We first address the motion of ENH to either expand the current proceeding or open a new investigation to review all REC class requirements and consider adjustments to ACP rates. We have reviewed the record and determined that ENH has offered no evidence that supports expanding this docket beyond the review of Class III requirements. While it may be difficult for providers of electricity to purchase an adequate amount of Class I RECs to meet the RPS obligations, we do not find that the constraints warrant a reduction in Class I requirements. We would like to note that over 11,000 NH Class I RECs and over 400 NH Class IV RECs were not retired in 2013 indicating that providers of electricity, either did not search hard enough or were unable to reach agreeable purchase terms.<sup>3</sup> Those providers of electricity, who do not purchase RECs comply with the RPS through ACPs into the renewable energy fund and thus support the development of new, renewable generation, which in turn creates additional RECs consistent with the purpose of the statute. Finally, the Commission has no statutory authority to adjust statutory ACP rates. As NHSEA pointed out, only the General Court can adjust ACP rates. *See* RSA 362-F:10.

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<sup>3</sup> Source: NEPOOL Generation Information System

Regarding Class III RECs, we find it appropriate to reduce Class III RPS requirements for 2014 and 2015. As described in the statute, Class III RECs are produced from facilities that began operation prior to January 1, 2006, and produce power with eligible biomass technologies having a gross nameplate capacity of 25 megawatts or less, or from methane gas. Because the eligible facilities must have begun operation before 2006, new biomass facilities are not eligible for Class III status. A Class III facility may become eligible as a Class I source as a result of increasing capacity or making an applicable investment, and then electing to be a Class III source instead of Class I source. *See* RSA 362-F:4(j). No facility has made this election, probably because the ACP for Class III is less than the ACP for Class I. The result is that the number of eligible facilities and associated Class III RECs are not increasing at this time.

Further, because the New Hampshire RPS law operates in connection with the regional REC market operated by the New England Power Pool-Generation Information System, New Hampshire Class III RECs are eligible to meet the RPS requirements in other states. The record indicates that the Wood IPPs sell the RECs they produce at a higher price in Connecticut than in New Hampshire, and that this situation is likely to continue at least through 2015. In addition, NH eligible landfill gas facilities have sold their RECs in Connecticut, Massachusetts, and Rhode Island, but it is unclear if this will continue. In fact, the record indicates that the market for Class III RECs remains unchanged from last year, when we reduced Class III REC requirements to 0.5% of retail electricity sales. *See* Order No. 25,674 (June 3, 2014).

Pursuant to RSA 362-F:4, VI, the Commission may modify the Class III requirements such that requirements are equal to an amount between 85% 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.”



In determining how to modify the Class III RPS requirements, we refer to the amount of New Hampshire-eligible Class III RECs generated in 2013 and assume the same amount of Class III RECs will be produced in 2014 and 2015. We did not hear from landfill gas facilities concerning the production or sale of Class III RECs for 2014 and 2015, but we assume that the amount of Class III RECs produced by eligible landfill gas sources also remains unchanged from 2013 through 2015.

The Wood IPPs confirmed that most or all of the Class III RECs generated by New Hampshire-eligible biomass sources were sold in other markets in 2013 and 2014. Absent specific information regarding the sale of Class III RECs by landfill gas sources in New Hampshire, we will assume that some portion of those RECs are available for sale in New Hampshire. Based on the foregoing analysis, we find that it is appropriate and consistent with the statute to modify the Class III RPS requirements for 2014 and 2015 to 0.5% of retail electricity sales.


Several commenters noted that the underlying reason that New Hampshire's Class III RECs are being sold almost exclusively into other states is that ACP levels and REC prices are higher elsewhere. This REC market inconsistency for Class III (and for other REC Classes), is not within the Commission's purview, and instead rests with the General Court, which has the power to align the Class III ACP rate (and ACP rates for other Classes) with that of Connecticut, Massachusetts, and Rhode Island and other states in the New England Power Pool Generation Information System REC market.

**Based upon the foregoing, it is hereby**

**ORDERED**, the ENH motion to expand this docket or, in the alternative, open a new docket to investigate all RPS Class requirements is hereby **DENIED**; and it is


**FURTHER ORDERED**, that, pursuant to RSA 362-F:4, VI, Class III RPS requirements for calendar years 2014 and 2015 shall be reduced to 0.5% of retail electric sales for each provider of electricity.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of March, 2015.

  
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Martin P. Honigberg  
Chairman

  
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Robert R. Scott  
Commissioner

Attested by:

  
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Debra A. Howland  
Executive Director