

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 19-203

ELECTRIC RENEWABLE PORTFOLIO STANDARD

Adjustments to Renewable Portfolio Class Requirements

Order Declining to Modify 2019 Class III Compliance Obligation

ORDER NO. 26,335

March 6, 2020

In this order, the Commission declines to modify the Class III Renewable Portfolio Standard requirements for the 2019 compliance year. The Commission maintains the requirement at eight percent as established in RSA 362-F:3.

I. PROCEDURAL HISTORY

By Order of Notice issued December 24, 2019, the Commission solicited comments addressing whether it should adjust the Renewable Portfolio Standard (RPS) Class III requirement (for eligible biomass and landfill gas) for compliance year 2019. To inform its decision, the Commission solicited both public and written comments relative to: (i) 2019 annual electric generation output of certified Class III eligible sources; (ii) the availability of New Hampshire Class III renewable energy certificates (RECs); (iii) and demand for New Hampshire Class III RECs based on market conditions for the 2019 compliance year.

While the Class III RPS requirement established by statute for 2019 is eight percent of retail electricity sales, the Commission has the discretion to modify the requirement 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.

RSA 362-F:3 and RSA 362-F:4, VI.

Providers of electricity comply with RSA 362-F by obtaining and retiring RECs in amounts necessary to meet or exceed the minimum statutory percentage of electric energy supplied to an end-use customer. One REC represents the renewable characteristic of one megawatt-hour (MWh) of renewable energy generation. Providers may also comply by making an alternative compliance payment (ACP) at a statutorily established rate for each megawatt-hour not met through the acquisition and retirement of certificates for each required REC class type. Revenues collected through ACPs are placed into the Renewable Energy Fund and are used to stimulate investment in renewable energy generation.

Pursuant to the Order of Notice, the Commission held a public comment hearing on January 13, 2020. At that hearing, the Commission directed that the record remain open for written comments through January 21. The Commission received comments from Bridgewater Power Company (Bridgewater); DG Whitefield, LLC, and Springfield Power, LLC (together, Whitefield and Springfield); Unitil Energy Systems, Inc. d/b/a Unitil (Unitil); Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource); New Hampshire Electric Cooperative, Inc. (NHEC); Sigma Consultants, Inc., and Constellation NewEnergy, Inc. (together, Constellation); the New Hampshire Department of Environmental Services (DES); and the Industrial Wind Action Group (Windaction).

The Order of Notice, transcript of the public comment hearing, written comments, and other filings and documents related to this matter, other than any information for which confidential treatment has been requested of or granted by the Commission, are posted on the Commission's website at <https://www.puc.nh.gov/Regulatory/Docketbk/2019/19-203.html>.

II. STAKEHOLDER COMMENTS

A. Informational Inquiries

i. 2019 Class III Eligible Source Electric Generation Output

Bridgewater stated that it operates a Class III eligible biomass facility with an expected annual output of 125,000 MWh of electricity. Due to a suspension in operations during April, May, and June of 2019, Bridgewater only produced 81,644 MWh in 2019. Bridgewater Comments at 2. Bridgewater stated that, after excluding the potential capacity from the Whitefield and Springfield biomass power plants, the total nameplate capacity of New Hampshire certified Class III facilities is 147 MW (of which 94 MW is attributable to biomass facilities and 53 MW is attributable to landfill gas generators). *Id.* at 4. Assuming a 90 percent capacity factor for Class III facilities, Bridgewater estimated the energy output from New Hampshire Class III certified facilities can be 1,158,946 MWh to satisfy an anticipated demand of 870,800 MWh. *Id.*

Whitefield and Springfield stated that they suspended operations in 2019 due to both market conditions and the Federal Energy Regulatory Commission's conclusion that RSA 362-H, which would have required certain electric utilities in the state to enter contracts for power from biomass power plants, is preempted by federal law. Whitefield and Springfield Comments at 2. They stated that the Whitefield and Springfield facilities have the capacity to annually produce 100,475 and 118,530 RECs respectively. However, after idling in April of 2019, their total combined Class III eligible REC output in 2019 was 53,672. *Id.*

ii. Availability of New Hampshire Class III RECs

Bridgewater stated that it has unsold Class III RECs and has offered to sell them at 10 percent below the ACP rate but has been unable to sell those RECs. Bridgewater Comments

at 2. According to Bridgewater any unavailability of sufficient Class III RECs is not due to insufficient biomass capacity. *Id.* at 4

Whitefield and Springfield stated that they produced 165,333 fewer Class III RECs in 2019 than they would have had their facilities not idled. Whitefield and Springfield Comments at 3. By their estimates, those unproduced Class III RECs account for 19 percent of New Hampshire's compliance target assuming estimated total retail sales equal 10,884,574,982 kWh. *Id.* at 3.

Windaction concluded that "there appears to be a sufficient supply of Class III REC[s]." Windaction Comments at 2.

iii. Demand for New Hampshire Class III RECs

Whitefield and Springfield noted that recent activity shows that REC sale prices being offered reflect the ACP value (\$55) while buyers are willing to pay approximately 80 percent of the ACP value (\$45). Whitefield and Springfield suggested that this "spread ... is highly unusual of a typical market, and it is indicative of the lack of product offering to the market." Whitefield and Springfield Comments at 3.

Unitil stated that it procured and contracted for a sufficient quantity of Class III RECs to meet its eight percent RPS Class III requirement for 2019. Unitil Comments at 1.

Eversource stated that it had met nearly all of its RPS Class III requirement for 2019, having procured an amount of Class III RECs that represents 7.9 percent of the 8 percent purchase requirement. Tr. at 11. It reported paying an average of \$46.42 per certificate; however, Eversource has paid \$52 per certificate in its most recent transaction. *Id.* Eversource noted absent downward modification to the 2019 RPS Class III requirement, the company needs 4,311 additional Class III RECs to meet its expected 2019 requirement. *Id.*

NHEC stated that it fully complies with the Class III RPS requirement through a combination of long-term contracts and forward-market purchases. NHEC Comments at 1.

Constellation stated that in the summer of 2019, New Hampshire Class III RECs traded in the \$20-\$25 range; however, by the fall they traded at, or near, the ACP rate of \$55. Tr. at 8. Constellation stated that the forward market for 2020 Class III RECs is currently trading above the ACP rate, concluded that this is due to constrained supply, and that it expects this trend to continue. *Id.* Constellation stated that there is demand for these RECs in other states, particularly in Connecticut where the ACP rate is higher than New Hampshire, resulting in a greater likelihood that RECs will settle in Connecticut and payment of ACPs in New Hampshire. *Id.* at 9.

Using regional data and trends, Windaction estimated New Hampshire's 2019 electric sales to be 10,501,078 MWh, requiring a total of 840,086 Class III RECs for 2019 compliance, assuming an eight percent obligation requirement. Windaction Comments at 1.

B. Stakeholder Positions

i. Whether it is Appropriate and Reasonable to Modify the New Hampshire Class III RPS Requirement

Bridgewater opposed modification of the 2019 Class III RPS requirement. Bridgewater Comments at 2-6. Bridgewater stated that any reduction to the Class III RPS requirement may have unintended consequences in the regional market, and would: undermine the purpose and goals of the RPS, fail to address reliance on ACPs, and economically disadvantage Class III biomass facilities. *Id.* Bridgewater stated that because of the low cost of electric energy resulting from the low cost of natural gas, biomass plants are more dependent on REC sales to maintain their operations. *Id.* at 3.

Bridgewater also stated that any shortage of Class III RECs is not due to insufficient capacity, but to market dynamics driven by the conduct of REC purchasers. *Id.* Bridgewater argued that lowering the Class III RPS purchase requirement during the compliance year erodes the generator's market leverage. Bridgewater also argued that lowering the requirement would encourage competitive suppliers to offer below market prices in anticipation that the Commission will continue to reduce purchase requirements if facilities do not generate. According to Bridgewater, that would exacerbate the market dynamics that it claims caused its production suspension in 2019. *Id.* at 5.

According to Bridgewater, any surplus RECs that are banked as a result of a downward modification to 2019 Class III REC purchase requirements will create additional downward pressure on generation in the future. *Tr.* at 24. Bridgewater noted that the only competitive supplier commenting did not state that it is unable to procure sufficient Class III RECs. Bridgewater Supplemental Comments at 2. Bridgewater argued that if the RPS requirement were reduced, competitive suppliers are under no obligation to pass any realized cost savings on to ratepayers, resulting in a commercial gain for those entities. *Id.*

Whitefield and Springfield supported modification to the 2019 Class III RPS requirement. Whitefield and Springfield Comments at 4. They stated that it would be appropriate and reasonable for the Commission to modify the Class III RPS requirement for 2019 because electricity providers will not be able to procure a sufficient quantity of RECs. *Id.*

Unitil supported modification to the 2019 Class III RPS requirement. Unitil Comments at 1. Unitil stated that its ability to obtain Class III RECs does not indicate that there is a sufficient supply of RECs in the current and future environment for all retail suppliers, and

opined that the Commission should adjust the Class III RPS requirement to appropriately balance supply and demand. *Id.* at 1-2.

Eversource recommended that the Commission take no action to reduce the 2019 RPS Class III requirement. Tr. at 13. Eversource argued that it would be difficult to offset costs and that RECs would have little to no value if the requirement were modified down. Eversource also noted that certain pending legislative proposals have the potential to eliminate the Class III RPS standards prospectively, potentially resulting in any Class III RECs banked from 2019 having no value in the future. *Id.* at 12-14.

NHEC supported modification to the 2019 Class III RPS requirement. Tr. at 18. NHEC noted that Class III RPS compliance costs amount to roughly 40 percent of the total costs that its members pay to comply with RPS standards, and that without adjustment to the obligation it would likely remain at that level. NHEC Supplemental Comments at 1. NHEC stated that it recognizes that RPS obligations are part of the regional market with many competing interests, and noted that the legislature included cost protections for ratepayers for circumstances where the purpose of RPS was not being achieved through its current design. *Id.* It opined that reducing the Class III requirement is appropriate to protect ratepayers from unreasonable costs that do not advance the goals of RPS. *Id.* at 1-2.

Constellation supported modification to the 2019 Class III RPS requirement. Tr. at 9. Constellation addressed comments offered by other participants, stating that 2019 Class III RECs in excess of the RPS requirement can be applied to the 2020 compliance year or sold in the Connecticut market. Constellation Supplemental Comments at 2. Constellation argued that if market prices become reduced, and distribution utilities like Eversource liquidate their excess RECs, then consumers would still be better off than if the RECs were retired in 2019. *Id.*

Constellation argued that, because any reduction to the 2019 obligation could have no effect on 2019 production, there will be no meaningful impact on environmental policy. Constellation argued that whether New Hampshire biomass plants will remain viable depends on a variety of things beyond Commission control, such as future supply, demand, future REC prices, and future legislation from New Hampshire and other jurisdictions. Constellation argued that what is knowable today is that 2019 production was insufficient to meet compliance demand. *Id.* at 2-3.

Constellation encouraged the Commission not to make decisions based on pending legislation or based on speculation of what will happen to REC prices with or without modification to 2019 compliance obligations. Constellation opined that the Commission should make its decision based on the law as it currently exists, and make a downward modification in response to the ‘largely undisputed’ facts about the restricted production and run up in prices due to lack of supply. *Id.* at 3. Constellation encouraged the Commission to consider modifications to the 2020 RPS requirement. *Id.* at 3-4.

DES opposed modification to the 2019 Class III RPS requirement. DES Comments at 1. DES expressed concerns about the impact an adjustment may have on the future operation of biomass plants in New Hampshire. *Id.* DES stated that it considers continued operation of biomass plants in New Hampshire to be environmentally beneficial. *Id.* DES argued that despite the closure of two New Hampshire biomass plants, the 2019 Class III REC market may not be as short as it is perceived to be, considering comments from utilities and the lack of any Class III ACPs in 2018. *Id.* at 2. DES argued that the Commission should maintain its policy of not modifying requirements unless it is necessary based on demand, and that based on demand, modification is not necessary. *Id.* DES agreed with Eversource that lowering the requirement now would weaken the price.

DES noted falling REC prices since the issuance of the Order of Notice in this matter, and argued that the remaining viability of New Hampshire biomass plants may be adversely impacted by lowering REC prices. According to DES, this is especially so, when considered in connection with the scheduled 2020 Class III ACP rate decrease, further impacting the economic viability of biomass plants. *Id.*

Windaction did not directly address whether it was appropriate or reasonable to modify the Class III requirement, focusing instead on the factual inquiries and potential methodology. Windaction Comments at 2. Windaction did, however, recommend a small reduction to the REC requirement, which it concluded would be prudent, pending the availability of banked Class III RECs. *Id.*

ii. Potential Adjustment Methodology

Bridgewater encouraged the Commission not to calculate any potential reduction to the RPS Class III requirement in the same manner as prior adjustments, during an active compliance year, because of the potential for adverse effects on biomass generators. Bridgewater Comments at 6-7. Bridgewater suggested alternatives to modifying the Class III RPS requirement. Those included the creation of a rate mitigation fund, conditioning any adjustment on a showing by load serving entities that they were unable to fulfill REC purchase offers at or near the ACP rate, or allowing existing Class III facilities to apply for Renewable Energy Fund grants that could be used to make capital investments in their facilities, thereby helping them to remain solvent and support the RPS goals. *Id.*

Whitefield and Springfield stated that in order to effect an ultimate cost savings to the consumer, the RPS Class III requirement should reflect 85 percent of the annual output of eligible sources. Whitefield and Springfield Comments at 4.

NHEC and Constellation supported modification of the RPS Class III requirement to 85 percent of the estimated overall production of Class III eligible resources in 2019. NHEC Supplemental Comments at 2, and Tr. at 9.

Windaction proposed a methodology to estimate a modification to the 2019 Class III RPS standards. Windaction Comments at 1-2. Its methodology examined data points to estimate a quantity of 863,204 Class III RECs necessary to fulfill the RPS Class III obligation for the 2019 compliance year. *Id.* Windaction recommended a downward adjustment of its estimate to 95 percent of its forecasted obligation, or 820,044 Class III RECs, resulting in a 0.191 percent downward modification to the Class III RPS requirement, or 7.81 percent purchase requirement absent a finding that there are sufficient banked Class III RECs available to increase the 2019 supply. *Id.*

III. COMMISSION ANALYSIS

Pursuant to RSA 362-F:4, VI, the Commission may modify the Class III requirement “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.”

Historically, the Commission has relied on a clear showing that Class III RECs are reasonably expected to be unavailable in New Hampshire, generally because they will settle first in other states based on demand and higher ACP rates, as the basis to find good cause to modify the Class III RPS requirement. *See, e.g., Electric Renewable Portfolio Standard, Order No. 25,484 at 16 (April 14, 2013)* (“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”); *Electric Renewable Portfolio Standard, Order No. 25,674*

at 8 (June 3, 2014) (“Both the electric utilities and Wood IPPs provided testimony that New Hampshire Class III eligible facilities can sell the RECs they produce at a higher price in Connecticut than New Hampshire and that this situation would likely continue for some time.”)

In 2017, however, the Commission stated that it was “persuaded that the existing plants will produce sufficient Class III RECS that will be available for purchase by electricity providers doing business in New Hampshire” based on comments that showed that the 2016 market price for Connecticut Class I RECs had dropped to \$21.00 per REC, well below Connecticut’s 2016 Class I ACP rate of \$55.00 and New Hampshire’s 2016 Class III ACP rate of \$45.00. *See Electric Renewable Portfolio Standard*, Order No. 25,978 at 9-10 (January 17, 2017).

Based on the record before us, we find that no modification of the 2019 Class III Renewable Portfolio Standard requirement is warranted. Not only is a modification unsupported by the stakeholders’ comments, but similarly-situated stakeholders made conflicting arguments about whether it is appropriate for the Commission to modify the 2019 Class III RPS requirement. Of the electricity distribution utilities that commented, all stated that they had either obtained a sufficient number of RECs to meet eight percent of their 2019 retail sales, or, in the case of Eversource, that it was very close to obtaining a sufficient number of RECs. The utilities disagreed, however, as to whether the Commission should modify the 2019 Class III requirement. The biomass plants similarly split on whether the Commission should modify the Class III requirement. Constellation, the only commenting competitive supplier stated that market prices indicated a shortage of supply, and that the Commission therefore should modify the requirement.

Based on the representations made by the commenters, we find no evidence that the potential 2019 Class III REC supply will be insufficient to meet the total 2019 Class III RPS

compliance requirement. Bridgewater's comments indicate that it produced 43,356 fewer RECs in 2019 than its potential output, while Whitefield and Springfield stated that those facilities produced 165,333 fewer RECs in 2019 than their potential annual output. Bridgewater estimated total energy output for all Class III certified facilities in 2019, at a 90 percent capacity factor, as 1,158,946 MWh, while Windaction provided historical references for total Class III REC production from eligible facilities for 2014-2018, showing a range of output from 899,214 RECs in 2014 to 1,159,833 RECs in 2017.

Three stakeholders estimated New Hampshire's Class III RPS requirement for the 2019 compliance year: Bridgewater estimated Class III REC demand at 870,800 MWh, without estimating New Hampshire 2019 total retail sales; Windaction estimated Class III REC demand at 840,086 MWh, based on estimated 2019 total retail sales of 10,501,078 MWh; and Whitefield and Springfield estimated New Hampshire's 2019 total retail sales to be equal to the 2018 confirmed sales figure of 10,884,574,982 kWh. Using the highest of those three estimates, at a compliance requirement of eight percent of retail sales, that results in a requirement of 870,766 RECs. Subtracting the known reduction in 2019 Class III RECs from the total Class III potential production estimate provided by Bridgewater, or the maximum historical Class III production figure presented by Windaction, demonstrates that the total potential 2019 Class III REC supply is greater than any estimated 2019 Class III RPS compliance requirement.

No stakeholder presented evidence demonstrating that the total potential 2019 Class III REC supply will be insufficient to meet the total 2019 Class III RPS compliance requirement. In addition, pursuant to 362-F:7, I, banked Class III RECs from the previous two compliance years may be used to meet up to 30 percent of the 2019 Class III requirement. Any such banked RECs

used for 2019 compliance would further decrease the demand for 2019 Class III RECs to meet the 2019 RPS Class III compliance requirement.

We acknowledge Constellation's comments suggesting that the market is constrained, that this situation will continue, and that RECs produced by Class III-eligible sources will be settled in Connecticut before New Hampshire. Constellation's conclusions, however, are not supported by the record. As DES points out, the Commission received no Class III ACPs during the 2018 compliance year. For compliance year 2019, both New Hampshire and Connecticut¹ had an ACP rate of \$55.00; as such, it appears there is no compelling reason that Class III RECs would more likely be settled in any other state. Constellation and Bridgewater present conflicting statements about the availability of Class III RECs; however, as the Commission has previously stated, difficulty in purchasing an adequate amount of RECs due to constrained supply does not create an undue hardship or merit a downward modification to RPS requirements. *See Renewable Portfolio Standard*, Order No. 25,674 at 7-8 (June 3, 2013).

We recognize that the apparent surplus of Class III RECs for 2018 may not be replicated in 2019, and that it is still possible that load serving entities may encounter constrained supply in a regional REC market that is complex, uncertain, unpredictable, and often lacks transparency. *See generally Renewable Portfolio Standard*, Order 25,768 at 5-7 (March 13, 2015) (stakeholder discussion of characterization of New England's REC market as lacking "liquidity, transparency and regional uniformity").

Given the uncertainty inherent in the regional REC market, as well as the understanding that even the slightest modification provides uncertainty to market participants and can have significant impacts and unintended consequences throughout the region, we are hesitant to

¹ *See* Conn. Gen. Stat. Ann. §§ 16-244c (h)(1), 16-245(k) (West 2018).

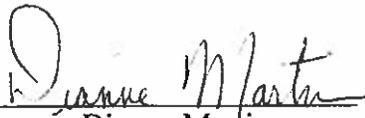
interfere with the market absent a compelling need. For those reasons, while the legislature has given the Commission discretion to modify the Class III requirement, we must be judicious in exercising that discretion. In the instant case, we decline to modify New Hampshire's RPS Class III compliance requirement without a showing that significant shortfalls are expected, or that the presence of external state compliance mechanisms will drive market demand for Class III-eligible RECs to other states.

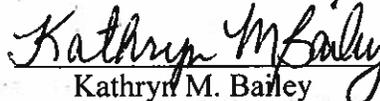
In conclusion, we find that good cause does not exist to modify the Class III RPS compliance requirement pursuant to RSA 362-F:4, VI .

Based upon the foregoing, it is hereby

ORDERED, that the New Hampshire RPS Class III requirement for the 2019 compliance year will remain unchanged at eight percent.

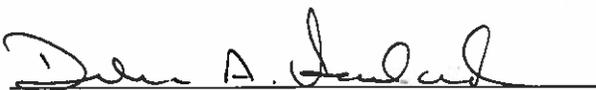
By order of the Public Utilities Commission of New Hampshire this sixth day of March, 2020.


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