

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 21-037

ELECTRIC RENEWABLE PORTFOLIO STANDARD

Adjustments to Renewable Portfolio Standard Class Requirements

Order Setting 2020 Class III Obligations

ORDER NO. 26,472

April 20, 2021

In this order, the Commission decreases the New Hampshire Renewable Portfolio Standard Class III requirement for compliance year 2020 from 8 percent to 2 percent, pursuant to RSA 362-F:4, VI.

I. PROCEDURAL HISTORY

By Order of Notice issued on March 5, 2021, the Commission opened this docket to investigate whether it should adjust the Renewable Portfolio Standard (RPS) Class III requirement (electric energy generated using eligible biomass or landfill gas fuel sources) for compliance year 2020 (CY 2020), which can be satisfied with renewable energy certificate purchases made by June 15, 2021, or alternative compliance payments made by July 1, 2021. To inform its decision, the Commission solicited public comment relative to: (i) the 2020 annual electric generation output of certified Class III-eligible sources; (ii) the availability of New Hampshire Class III renewable energy certificates (RECs); and (iii) the demand for New Hampshire Class III RECs based on regional market conditions for CY 2020.

While the Class III RPS requirement established by statute for CY 2020 is 8 percent of retail electricity sales, the Commission has the authority to modify the requirement to an amount equal to 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 their end-use customers. One REC represents the renewable characteristics of one megawatt-hour (MWh) of electric energy generation. Providers may also comply by making an alternative compliance payment (ACP) at a statutorily-established rate for each MWh not met through the acquisition and retirement of RECs for each required RPS class type. Revenues collected through ACPs are held in the Renewable Energy Fund (REF), which is used to stimulate investment in renewable energy generation.

The Commission held a hearing to receive public comments on March 29, 2021. At that hearing, the Commission heard from Bridgewater Power Company (Bridgewater or BPC); Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource); New Hampshire Electric Cooperative, Inc. (NHEC); Sigma Consultants, Inc. and Constellation New Energy, Inc. (together, Constellation); and Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty (Liberty) and directed that the record remain open for written comments through April 2.

The Order of Notice, 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/2021/21-037.html>.

II. STAKEHOLDER COMMENTS

A. Bridgewater

Bridgewater submitted written comments on March 29, 2021, (BPC Comments), commented at the hearing on March 29, and submitted supplemental written comments on April 2 (BPC Supplemental Comments). Bridgewater stated that it did not object to reduction of the Class III REC purchase requirement for CY 2020. BPC Comments at 1. Bridgewater maintained, however, that any reduction to the 2020 Class III RPS compliance requirement should not be used as future precedent, and recommended that any future reduction to the Class III compliance requirement be conditioned on Load Serving Entities (LSEs) showing that they “made every effort to procure RECs during and throughout the entire compliance year.” *Id.* at 1-2. Bridgewater acknowledged a current unavailability of Class III RECs, and attributed that unavailability, in part, to temporary closures of biomass facilities. *Id.* at 2. According to Bridgewater, the temporary closures of biomass facilities is attributable to two factors: (1) the low cost of natural gas, which makes Class III-certified biomass generating facilities more reliant on REC income; and (2) practices of LSEs as REC market participants that drive down the price of Class III RECs in early quarters of the compliance year. Bridgewater asserted that those market practices result in temporary plant shut downs, which in turn are used by LSEs to seek regulatory reductions in Class III RPS compliance requirements. *Id.* at 2-4.

According to Bridgewater, the unavailability of sufficient Class III RECs is not primarily attributable to a lack of capacity, but rather to the conduct of LSEs as market participants. *Id.* at 4. Bridgewater argued that the lowering of purchase requirements for Class III RECs for compliance years after 2020 would erode the market leverage of Class III REC-eligible generating facilities that wish to continue to operate. *Id.* Bridgewater also argued that the

circumstances encountered for CY 2020 are different and distinct from other occasions where the Commission considered adjusting Class III REC purchase requirements because “a reduction in this compliance year will have an adverse effect on biomass facilities like BPC in future compliance years if the [Commission] does not address a primary reason for the lack of supply.” *Id.* at 5.

In its supplemental comments, Bridgewater reiterated its belief “that the Commission should investigate whether the market structure should be altered and/or further regulated to ensure equity to all participants and to ensure that the purpose[s] of RSA chapter 362-F are served.” BPC Supplemental Comments at 3. Bridgewater stated that it approached two of the LSEs that commented at the March 29 hearing because it had an available supply of Class III RECs that it was ready, willing, and able to sell below the ACP rate, but was not offered any price for its RECs by those LSEs. *Id.* at 4.

B. Eversource

Eversource commented at the hearing, stating that to date it had purchased approximately 85,000 Class III RECs for CY 2020, leaving approximately 202,000 Class III RECs remaining to fulfill the statutory 8 percent Class III requirement. According to Eversource, there was no response to its recent solicitations for Class III RECs, and it anticipated that, given current REC market conditions, the remainder of Eversource’s Class III requirement would likely be met through an ACP.

Eversource responded to Bridgewater’s recommendation that further conditions be placed on Class III RPS requirement adjustments, stating that there does not appear to be sufficient Class III REC supply to meet the New Hampshire Class III RPS compliance requirement. Eversource requested that any potential adjustment to the CY 2020 Class III RPS requirement be

made in a timely manner and not entirely devalue the Class III RECs it had already purchased. Eversource further characterized the reduction in Class III REC availability as likely to continue, and it encouraged the Commission to take action now for future compliance years.

C. NHEC

The NHEC submitted written comments on March 29, 2021 (NHEC Comments), and commented at the March 29 hearing. NHEC stated that there is a scarcity of Class III RECs in the New Hampshire market, and characterized that shortage as a significant change compared to the 2019 compliance year. NHEC Comments at 1. NHEC represented it had anecdotal information that biomass and landfill gas generating facilities are selling Class III RECs for settlement in Connecticut, and have been doing so since at least the summer of 2020. *Id.* at 2. According to NHEC, absent a reduction in the Class III RPS requirement, it would meet its 2020 obligation with 3,532 banked Class III RECs and an ACP payment of approximately \$1.7 million. *Id.* NHEC concluded that market conditions have created a level of Class III REC scarcity not seen since the 2014-2016 period, and it encouraged the Commission to “reduce the 2020 Class III RPS requirements to the lowest level that is consistent with the RSA 362-F:4(VI) criteria.” *Id.*

At the hearing, NHEC responded to Bridgewater’s recommendation that future conditions be placed on Class III RPS requirement adjustments. NHEC maintained that, because there are a number of variables that are unknown early in any compliance year, such as its overall obligation based on retail sales, the REC output from facilities with which it has long-term contracts, and when and where REC producers will ultimately sell their supply, Bridgewater’s proposal represents an impractical solution. NHEC also questioned the

Commission's statutory authority to implement any such conditions intended to affect REC purchase timing and other LSE market practices.

D. Constellation

Constellation commented at the hearing, stating that a reduction to the CY 2020 Class III RPS requirement is appropriate, in view of the supply and demand in the REC marketplace, and strongly encouraged the Commission to reduce the Class III RPS requirement for CY 2020. According to Constellation, it appears that most New Hampshire Class III RECs also qualify in other jurisdictions, in particular as Class I RECs in Connecticut and Massachusetts, both of which have significantly higher ACP rates than New Hampshire. Constellation asserted that, under current market conditions, RECs that qualify in other jurisdictions in addition to New Hampshire are trading between the Class III ACP rate of \$34.54 and \$50 per REC. According to Constellation, this results in a situation where most suppliers have no interest in settling Class III RECs to meet New Hampshire RPS obligations due to their greater value for meeting other states' RPS compliance obligations. Constellation asserted that those market conditions would result in a significant amount of money paid in the form of ACPs if the statutory 8 percent obligation is not decreased.

Constellation also responded to Bridgewater's recommendation that additional conditions be placed on Class III RPS requirement modifications, stating that such conditions would be unnecessary and create a one-sided regulatory burden. According to Constellation, the proper remedy for anti-competitive behavior or price manipulation is to bring relevant evidence before the Commission and allow it to consider taking appropriate action against the offending party.

E. Liberty

Liberty commented at the hearing, stating that it had successfully solicited and purchased a sufficient quantity of RECs to meet its entire Class III RPS obligation for CY 2020 at the statutory 8 percent requirement. Liberty expressed concern that the Class III RECs it had purchased for 2020 compliance could become a stranded cost if the Class III requirement were significantly reduced for CY 2020 and any future compliance years.

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.”

The Commission has historically found good cause to reduce the Class III compliance obligation for a particular year based on a showing that Class III RECs are reasonably expected to be unavailable for New Hampshire RPS compliance because those RECs will be used for compliance in other states with higher ACP rates. *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.”).

Based on the comments received and other Commission reports and analysis, we find there is unlikely to be a significant number of Class III RECs available for purchase to meet the New Hampshire CY 2020 obligations because those RECs are likely to be used for compliance in other states with higher ACP rates and demand for such RECs. That anticipated unavailability is due in large part to the statutory reduction in the New Hampshire Class III ACP rate, from \$55 for compliance years 2017-2019 to \$34.54 for CY 2020, which has caused providers to purchase the available Class III RECs for settlement in other states within the regional marketplace. *See* RSA 362-F:10, II. As such, we will exercise our authority under RSA 362-F:4, VI to reduce the Class III RPS requirement for CY 2020.

In determining how to modify the CY 2020 Class III requirement, we refer to the amount of Class III RECs that were purchased and settled in New Hampshire for the 2019 compliance year. Because that quantity is a subset of the total Class III-eligible RECs available for the 2019 compliance year, it represents a conservative estimate of the quantity of Class III RECs available for purchase for CY 2020, in the absence of regional marketplace dynamics driving the available REC supply to Connecticut and Massachusetts. For the 2019 compliance year, 756,345 Class III RECs were purchased and settled in New Hampshire.¹ For purposes of our analysis, we will assume that a similar quantity of Class III-eligible RECs, 756,000 RECs, were produced during 2020. Based on Eversource's and Liberty's representations regarding the number of Class III RECs already purchased for CY 2020, we estimate that 120,000 out of 756,000 produced Class III RECs were available, actually purchased, and will be settled for CY 2020. Giving due

¹ *See* 2019 New Hampshire Renewable Energy Fund Annual Report at 16 (accessible at: <https://www.puc.nh.gov/Sustainable%20Energy/Renewable%20Energy%20Fund/20201001-PUC-SE-2020-REF-Report-to-Legislature.pdf>). Those 2019 vintage RECs were either used for 2019 RPS compliance or were banked by electricity providers for use during the next two compliance years, subject to the applicable annual limit equal to 30 percent of the provider's Class III obligation. *See* RSA 362-F:7, I.

consideration to current regional market dynamics, and BPC's Supplemental Comments indicating it was prepared to sell some quantity of Class III RECs for a price less than the ACP rate, we will assume that 5 percent of the remaining 636,000 Class III RECs produced, or 31,800 RECs, are also available for purchase.

Although we heard limited comments regarding electricity providers' intentions to use banked RECs for CY 2020 Class III compliance (NHEC stated it would use 3,532 banked RECs for that purpose), it is reasonable to conclude that some quantity of banked Class III RECs produced during 2018 and 2019 will be available for CY 2020 compliance based on the relatively low levels of ACPs for the last two compliance years.² As a proxy for banked Class III RECs from compliance years 2018 and 2019, we will assume that approximately 10 percent of the 756,345 Class III RECs purchased and settled for 2019 compliance were banked, resulting in approximately 75,600 RECs potentially available for CY 2020 Class III compliance.

Based on these assumptions and analyses, we conclude that approximately 227,400 Class III RECs are reasonably anticipated to be available for CY 2020. That represents approximately 2.2 percent of the estimated total retail electricity sales for CY 2020 of 10,386,717 MWh.³ Adjusting the number of Class III RECs available for New Hampshire CY 2020 compliance, after taking into account regional market conditions within the statutory range of 85 to 95 percent of potential annual output of available eligible sources, we may adjust the CY 2020 Class III RPS requirement to between 1.9 percent (85 percent) and 2.1 percent (95 percent) of

² See 2019 New Hampshire Renewable Energy Fund Annual Report at 13 (accessible at: <https://www.puc.nh.gov/Sustainable%20Energy/Renewable%20Energy%20Fund/20201001-PUC-SE-2020-REF-Report-to-Legislature.pdf>) (detailing \$695,860 in Class III ACP revenue for compliance year 2019, compared to \$0 in compliance year 2018).

³ See Renewable Portfolio Standards Compliance, Net Metering Credit for Class I and Class II Pursuant to RSA 362-F:6, II-a, [https://www.puc.nh.gov/Sustainable Energy/rps-compliance.html](https://www.puc.nh.gov/Sustainable%20Energy/rps-compliance.html) (last visited April 12, 2021).

total retail sales. Based on that range, we will set the CY 2020 Class III RPS requirement to 2 percent of the total retail sales of electricity by each provider to its end-use customers.

We acknowledge Bridgewater's comments pertaining to the precedential value of adjustments of the Class III compliance requirement and its recommendation that conditions should be placed on providers prior to making any future adjustments to that requirement. The Commission does not have clear authority to act as Bridgewater requests to prescribe the REC market purchasing practices of electric utilities or competitive electric power suppliers, in light of the provisions of RSA 362-F:6 and :7. Those statutory provisions contemplate the sale, exchange, and use of RECs within the ISO-New England and New England Power Pool's regional generation information system. In addition, RSA 362-F:4, VI focuses on regional market dynamics. In any event, we are not persuaded that taking the actions requested by Bridgewater are warranted at this time. Such market practice prescriptions could have a significant but unknown impact on the state and regional REC market.

With respect to the timing of any decision to modify the Class III compliance requirement for a specific compliance year, we note that the Commission on occasion has modified the Class III purchase requirements near the beginning of, rather than after the end of, a particular compliance year. *See Electric Renewable Portfolio Standard*, Order No. 25,484 at 18 (April 14, 2013) (setting Class III RPS requirements for both 2012 and 2013). At this time, we do not find it appropriate to modify Class III requirements for any future compliance years or to adopt any conditions for future implementation of our authority under RSA 362-F:4, VI. We decline to take such actions for the same reasons as were identified by the Commission when it declined to modify the 2019 Class III RPS requirement:

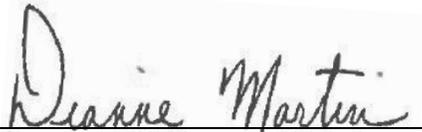
Given the uncertainty inherent in the regional REC market, as well as the understanding that even the slightest modification provides uncertainty to market participants and can have significant impacts and unintended consequences throughout the region, we are hesitant to interfere with the market absent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

Electric Renewable Portfolio Standard, Order No. 26,335 at 13-14 (March 6, 2020).

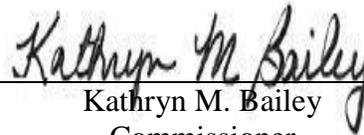
Based upon the foregoing, it is hereby

ORDERED, that, pursuant to RSA 362-F:4, VI, the New Hampshire Renewable Portfolio Standard Class III requirement for the 2020 compliance year is set at two percent of retail electric sales.

By order of the Public Utilities Commission of New Hampshire this twentieth day of April, 2021.

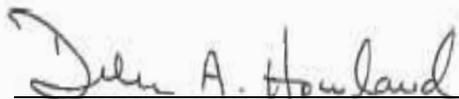


Dianne Martin
Chairwoman



Kathryn M. Bailey
Commissioner

Attested by:



Debra A. Howland
Executive Director

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Email Addresses

ExecutiveDirector@puc.nh.gov
pjaesd@comcast.net
kabernethy@ameresco.com
rabraham@ces-ltd.com
jackerly@forgreenheat.org
madams@northernforest.org
corey@bidurenergy.com
rayalbrechtpe@gmail.com
bryan@firstpointpower.com
aquiart@axsessgroup.com
karmand@megaenergyllc.com
javier@goodenergy.com
gbass@noblesolutions.com
cbeebe@beamgrp.com
mike@rev-en.com
tbellotti@myenergytrust.com
caleb.berger@capitalenergy.net
aberrios@amerexenergy.com
sbestwick@firstpointpower.com
kbhuva@criusenergy.com
jbillingsley@purepathenergy.com
jack@seacoastenergy.com
Emily.Black.huynh@edfenergyservices.com
lindsay.blume@ems.schneider-electric.com
jeb.bradley@leg.state.nh.us
frontdesk@abworth.com
bbryce@townsquareenergy.com
kelly@cleanenergynh.org
jburt@powermgt.com
rick@advantageenergy.net
paul.button42@gmail.com
energytecheast@hotmail.com
callnanb@nhec.com
pcaplan@ensyndev.com
carroll@unitil.com
richard.chagnon@puc.nh.gov
pradip.chattopadhyay@oca.nh.gov

jessica.chiavara@eversource.com
jchorlian@yahoo.com
critchfield.james@epa.gov
claytongrc@yahoo.com
kcobb@questenergysolutions.com
bcolombo@firstpointpower.com
rcooney.renewables@gmail.com
brian@umginc.com
karen.cramton@puc.nh.gov
jcressy@sullivancountynh.gov
jeff.curry@lakelandelectric.com
jeffrey.cyr@dos.nh.gov
mdangelo@napower.com
mdavey@eeiservices.com
mdavis@groundenergysupport.com
planetgreen.brian@gmail.com
kevindeannow@gmail.com
mdean@mdeanlaw.net
edearman@sparkenergy.com
kdegroat@antaresgroupinc.com
ddenny-brown@mintenergy.net
sdesai@licenselogix.com
allen.desbiens@eversource.com
rdesrosiers@csberlinops.com
ddowler100@gmail.com
cduby@sesenergy.org
mick@shiftnrg.com
patax95@palmharboraccounting.com
tad@whitecolumnssolutions.com
Stephen.Eckberg@puc.nh.gov
daniel.eida@karbone.com
epler@unitil.com
bryan.erb@pinnacleenergyservices.com
jon.ervin@healthtrustpg.com
gwferenz@gmail.com
Brianna@cleanenergynh.org
michael.fitzgerald@des.nh.gov
geo@usasolarstore.com
jfontaine@des.state.nh.us
matthew.fossum@eversource.com
tom.frantz@puc.nh.gov
mark@frolingenergy.com
energy49@comcast.net
bart.fromuth@haecpower.com
bfrost@nhhfa.org
gretchen.fuhr@exeloncorp.com

gabelcj@cdmsmith.com
cgaddes@ces-ltd.com
sgeiger@orr-reno.com
cgelo@napower.com
doug@cleanenergysolutions.biz
gibsonm@conedsolutions.com
agilleo@greenlots.com
ips1@verizon.net
mgowda@antaresgroupinc.com
david.goyette@puc.nh.gov
negeol@hotmail.com
edgray@antaresgroupinc.com
dgriffin@fidelityenergygroup.com
marsha.griffin@na.engie.com
debra.hale@libertyutilities.com
marc.hanks@directenergy.com
ryan.harwell@directenergy.com
info@crosslinkenergy.com
shavlicek@napower.com
jhawkins@titanenergyne.com
jenny.heeter@nrel.gov
dan.heim@constellation.com
phendel@holderness.org
chris.hendrix@texasretailenergy.com
thenkel1@nc.rr.com
dhenry@hotzero.biz
trevor@abestpower.com
solarfarmbank@gmail.com
dov@yourchoiceenergyllc.com
hoferk@conedsolutions.com
george.horrocks@harmonyenergyworks.com
dhowland@warwickmills.com
thughes@gosunward.com
reintrone@aol.com
gwjststengr@aol.com
tjacobsen@bluedeltaenergy.com
hjager@wilsonengineeringservices.com
jescalante@summerenergy.com
johnsonjohn@conedsolutions.com
kjoseph@napower.com
gjoyce@ssesinc.com
skaufman@cleanassetpartners.com
bkeith@competitive-energy.com
Dan.Kern@smartenergy.com
jean@goodenergy.com
kingsley@inrslc.com

amy.klaviter@constellation.com
hr@americaapproved.com
sarah.knowlton@libertyutilities.com
donald.kreis@oca.nh.gov
kroll@gcglaw.com
skueffner@xoomenergy.com
dkyle@yeatonassociates.com
richard.labrecque@eversource.com
rachel.ladwig@tdstelecom.com
Alane@KnollwoodEnergy.com
senerynhbob@gmail.com
dlamis@actcommodities.com
david.lamothe@gza.com
laurent@capitolsolarenergy.com
mleclerc@providerpower.com
mleclerc@providerpower.com
mleibman@hplco.com
jlessen@energyrebate.com
aletendre@mcsbnh.com
levesque@inrsllc.com
Brad.Lewis@CreativEnergy.org
mllibby@bernsteinshur.com
clindsey@antaresgroupinc.com
lisa@linowes.com
jloop@enerconnex.com
mlynch@re-gen.com
emaher@dtclawyers.com
manwells@conedsolutions.com
mapellip@conedsolutions.com
mpf@stateside.com
marty@esaverenabler.com
lmccreery@fs.fed.us
brian.mcdermott@traditionenergy.com
tina@h2dc.com
tmclaughlin@shaheengordon.com
mcneils@nhec.com
rmiller@townsquareenergy.com
madeleine@cleanenergynh.org
mark@hospitalenergy.com
dmoon@ebcne.org
jon.moore@5-five.com
tom.moore@mintenergy.net
dorian.moore@vistraenergy.com
mmorgan@megaenergyllc.com
mmorin@stanleyenergy.com
amoroz@mintenergy.net

jmoser@bernsteinshur.com
rmunnely@davismalm.com
solutions@energynewengland.com
neil@hplco.com
niebling@inrslc.com
elizabeth.nixon@puc.nh.gov
amanda.noonan@puc.nh.gov
Michael.Nordlicht@ageraenergy.com
kirsty.norvell@unifiedenergy.com
dnute@resilientbuildingsgroup.com
bobrien@rsgenergy.com
tucker@rjtenergy.com
moleary@bridgewater-os.com
ocalitigation@oca.nh.gov
tollinger@globalpowerconsultants.com
susanwolsen@gmail.com
rolson@rolsonlawoffice.com
carlo-pvt@northeastgeo.com
stuart_ormsbee@transcanada.com
johnorr@optonline.net
dossoff@suncook.com
ppabor@wm.com
dpatch@orr-reno.com
dennis.pednault@gmail.com
deandra.perruccio@puc.nh.gov
katherine.peters@eversource.com
howard.plante@powernewengland.com
rplutzer@resglobal.com
doug.pope@popeenergy.com
mpower@trane.com
tim@inchargeenergy.com
karen.rantamaki@nh.gov
ian@raymondphoto.com
jreed@warwickmills.com
regulatory@clearviewenergy.com
regulatory@gosunwave.com
regulatory@mp2energy.com
David.ricketts@vistracorp.com
katherine.roberge@psnh.com
tim@wellspringgeo.com
franco@cai-info.com
krowen@varo1.com
drumlindowne@yahoo.com
mark.saltsman@libertyutilities.com
clint.sandidge@calpinesolutions.com
mark.sassi@bridgeenergy.net

info@napower.com
peter@firstpointpower.com
mschmidt@sesenergy.org
angela.schorr@nrg.com
w.shortiii@verizon.net
rsilkman@competitive-energy.com
service@lpbenergy.com
Lawrence.smith@insightenergyservices.com
hilary.smith@trtholdings.com
envsolar@comcast.net
hcs@dcmlogic.com
jstock@nhtoa.org
val@cleanegroup.org
mstumpo@legacyenergy.com
ecolectricnh@gmail.com
tswanick@gmail.com
julie@gulfstreamenergy.net
firstchoiceenergy@comcast.net
steve@sresre.com
mtrinka@criusenergy.com
mtrombly@americanewenergy.com
stuleja@alternatepower.com
mike@turncyclesolutions.com
qvale@aqvlaw.com
hkv@solarwave.com
marianne.vetter@felpower.com
fwarner@msiutilities.com
john.warshaw@libertyutilities.com
bweego@spragueenergy.com
daniel.white2@dc.gov
bryan.white@calpinesolutions.com
dwiers@satorienergy.com
david.wiesner@puc.nh.gov
historicharrisville@msn.com
cwilliams@heatspring.com
aundrea.williams@nexteraenergyservices.com
cgw@rathlaw.com
dan@wesenergyandenvironment.com
twilson@wilsonengineeringservices.com
dwilson@broadrock.com
eric.wind@puc.nh.gov
matthew.wolfe@maderaenergy.com
woodsca@nhec.com
bpy@bestpracticeenergy.com
pyuen@seadvantage.com