

Chapter 311: PORTFOLIO REQUIREMENT

SUMMARY: This Chapter establishes requirements and standards for implementing the eligible resource new renewable resource, and thermal energy portfolio requirements.

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§ 1 PURPOSE

The purpose of this Chapter is to implement the State's policy to encourage the generation of electricity from renewable and efficient sources, the production of thermal energy from renewable resources and to diversify electricity production on which residents of this State rely.

§ 2 DEFINITIONS

- A. **Affiliate.** "Affiliate" means any corporate affiliate or other entity that has a shared financial interest as determined by the Commission with a customer of a Maine transmission and distribution utility that receives service at the transmission or subtransmission voltage level.
- B. **Aggregator.** "Aggregator" means an entity that gathers individual customers together for the purpose of purchasing electricity, provided such entity is not engaged in the purchase or resale of electricity directly with a competitive electricity provider, and provided further that such customers contract for electricity directly with a competitive electricity provider.
- C. **Alternative Compliance Payment Rate.** "Alternative compliance payment rate" means a certain dollar amount per megawatt-hour set by the Commission that a competitive electricity provider may pay to the Commission to satisfy the portfolio requirements of this chapter.
- D. **Broker.** "Broker" means an entity that acts as an agent or intermediary in the sale and purchase of electricity but that does not take title to electricity, provided such entity is not engaged in the purchase or resale of electricity directly with a competitive electricity provider, and provided further that such customers contract for electricity directly with a competitive electricity provider.
- E. **Class I Resource.** "Class I resource" means a new renewable capacity resource.
- F. **Class IA Resource.** "Class IA resource" means a Class I resource other than a Class I resource that for at least 2 years was not operated or was not recognized by the New England independent system operator as a capacity resource and, after September 1, 2005, resumed operation or was recognized by the New England independent system operator as a capacity resource.
- G. **Competitive Electricity Provider.** "Competitive electricity provider" means a marketer, broker, aggregator, standard offer provider or any other entity selling electricity to the public at retail in Maine.
- H. **Compliance Period.** "Compliance period" means the time period over which the portfolio requirement must be satisfied.
- I. **GIS.** "GIS" means the NEPOOL Generation Information System or successor system.

- J. **GIS Certificates.** "GIS certificates" mean certificates created pursuant to the NEPOOL Generation Information System that represent attributes of electric power and that may be traded separately from the energy commodity.
- K. **Efficient Resource.** "Efficient resource" means a source of electrical generation that qualifies as a qualifying cogeneration facility under the Federal Energy Regulatory Commission rules, 18 Code of Federal Regulations, Part 292, Subpart B, as in effect on January 1, 1997, was constructed prior to January 1, 1997 and, during any calendar year, the sum of the useful power output and the useful thermal energy output of the facility is no less than 60% of the total energy input to the facility.
- L. **Eligible Resource or Class II Resource.** "Eligible resource" or "Class II resource" means a source of electrical generation that:
- (1) Generates power that can physically be delivered to the control region in which the New England Power Pool, or its successor as approved by the Federal Energy Regulatory Commission, has authority over transmission, or to the Maritimes Control Area; and
 - (2) Is either a renewable resource or an efficient resource.
- M. **Multi-Fuel Facility.** "Multi-fuel facility" means an electric generation facility that uses more than one fuel or technology in the production of electricity.
- N. **ISO-NE.** "ISO-NE" means the Independent System Operator of the New England bulk power system or successor organization.
- O. **ISO-NE Control Area.** "ISO-NE control area" means the area in which the ISO-NE operates the New England bulk power system.
- P. **Marketer.** "Marketer" means an entity that as an intermediary purchases electricity and takes title to electricity for sale to retail customers.
- Q. **Nameplate Capacity.** "Nameplate capacity" means the capacity rating of a generation facility as specified by the manufacturer.
- R. **NAR.** "NAR" means the Northern American Renewables Registry.
- S. **NAR Certificates.** NAR certificates mean certificates created pursuant to the Northern American Renewables Registry that represent attributes of electric power and that may be traded separately from the energy commodity.
- T. **New.** "New" as applied to a renewable capacity resource means qualified hydroelectric output or a renewable capacity resource that:
- (1) Has an in-service date after September 1, 2005;
 - (2) Was added to an existing facility after September 1, 2005;
 - (3) For at least 2 years was not operated or was not recognized by the New England independent system operator as a capacity resource and, after September 1, 2005,

resumed operation or was recognized by the New England independent system operator as a capacity resource. For the purposes of this subparagraph, "capacity resource" has the same meaning as in 3210-C, subsection 1, paragraph A; or

- (4) Was refurbished after September 1, 2005 and received certification from the commission:
 - (a) Before September 1, 2019, that it is operating beyond its previous useful life or is employing an alternate technology that significantly increases the efficiency of the generation process; or
 - (b) On or after September 1, 2019, that it is operating beyond its previous useful life as evidenced by a finding that the facility would be reasonably likely to cease operation if not for substantial capital investment made after September 1, 2018, except for capital investment required to meet state and federal fish passage standards.

U. **NMISA.** "NMISA" means the Northern Maine Independent System Administrator or successor organization.

V. **Pumped-Storage Hydroelectric Facility.** "Pumped-storage hydroelectric facility" means a hydroelectric generation facility that utilizes pumping facilities and a storage reservoir in the production of electricity.

W. **Qualified Hydroelectric Output.** "Qualified hydroelectric output" means the following annual percentages of the total electrical output of a hydroelectric generator licensed by the Federal Energy Regulatory Commission that is a renewable capacity resource and that on January 1, 2019 had a total nameplate capacity of at least 25 megawatts, as specified in the license issued by the Federal Energy Regulatory Commission, is located outside of the historic freshwater range of the Gulf of Maine Distinct Population Segment of Atlantic Salmon as defined by the National Oceanic and Atmospheric Administration, National Marine Fisheries Service in 74 Federal Register, 29299 (2009) and 29343 (2009), and is interconnected to an electric distribution system located in the State:

- (1) In 2020, 40%, not to exceed an aggregate of 200,000 megawatt-hours for all qualified hydroelectric output;
- (2) In 2021, 50%, not to exceed an aggregate of 250,000 megawatt-hours for all qualified hydroelectric output;
- (3) In 2022, 60%, not to exceed an aggregate of 300,000 megawatt-hours for all qualified hydroelectric output;
- (4) In 2023, 70%;
- (5) In 2024, 80%;
- (6) In 2025, 90%; and
- (7) In 2026 and each year thereafter, 100%.

- X. **Refurbish.** "Refurbished" means an investment has been made in equipment or facilities, other than for routine maintenance and repair, to renovate, reequip or restore the renewable capacity resource.
- Y. **Renewable Capacity Resource.** "Renewable capacity resource" means a source of electrical generation:
- (1) Whose total power production capacity does not exceed 100 megawatts and relies on one or more of the following:
 - (a) Fuel cells;
 - (b) Tidal power;
 - (d) Geothermal installations;
 - (e) Hydroelectric generators that meet all state and federal fish passage requirements applicable to the generator;
 - (f) Biomass generators that are fueled by wood, wood waste or landfill gas; or
 - (g) Anaerobic digestion of by-products of waste from animals or agricultural crops, food or vegetative material, algae or organic refuse; or
 - (2) That relies on wind power installations or solar power installations.
- Z. **Renewable Energy Credit.** "Renewable energy credit" means a tradable instrument that represents an amount of electricity or thermal energy generated.
- AA. **Renewable Resource.** "Renewable resource" means a source of electrical generation:
- (1) That qualifies as a small power production facility under the Federal Energy Regulatory Commission rules, 18 Code of Federal Regulations, Part 292, Subpart B, as in effect on January 1, 1997; or
 - (2) Whose total power production capacity does not exceed 100 megawatts and that relies on one or more of the following:
 - (a) Fuel cells;
 - (b) Tidal power;
 - (c) Solar arrays and installations;
 - (d) Wind power installations;
 - (e) Geothermal installations;
 - (f) Hydroelectric generators;
 - (g) Biomass generators that are fueled by wood or wood waste, landfill gas or anaerobic digestion of agricultural products, by-products or wastes; or
 - (h) Generators fueled by municipal solid waste in conjunction with recycling.
- BB. **Standard Offer Provider.** "Standard offer provider" means a provider of standard offer service chosen pursuant to Chapter 301 of the Commission's rules.
- CC. **Thermal Energy.** "Thermal energy" means heat, steam, hot water or another form of thermal energy:

- (1) Produced directly by a facility using sunlight, biomass, biogas or liquid biofuel or produced as a byproduct of electricity generated by a Class I or Class IA resource;
- (2) That begins operation after June 30, 2019, as certified by the commission;
- (3) Delivered to an end user in the State in a manner that can be verified by metering or other means certified by the commission to allow for auditable validation of useful thermal energy generated;
- (4) Used for heating, cooling, humidity control, process use or other end use to meet a need of the end user that would otherwise be met using another energy source such as electricity or an on-site thermal energy system; and
- (5) Generated or delivered in accordance with any efficiency performance standards established by the commission.

DD. **Thermal Renewable Energy Credit.** "Thermal renewable energy credit" means a tradable instrument that represents an amount of thermal energy equivalent to a unit of electricity. A thermal renewable energy credit of one megawatt represents 3,412,000 British thermal units of thermal energy, as verified by the commission.

EE. **Useful Power Output.** "Useful power output" means the electrical or mechanical energy made available for use, exclusive of any energy used in the power production process.

FF. **Useful Thermal Energy.** "Useful thermal energy" means heat energy made available to an industrial or commercial process, net of any heat contained in condensate return and makeup water, used in a heating application or used in a space cooling application.

§ 3 NEW RENEWABLE RESOURCES; CLASS I AND CLASS IA

A. **Class I Requirement.** Except as provided in subsection D, beginning January 1, 2008, each competitive electricity provider, including standard offer providers, must account for no less than the percentage specified below of its total kilowatt-hour sales to customers in Maine with electric energy associated with Class I resources in accordance with the provisions of this Chapter.

1. One percent for the period from January 1, 2008 to December 31, 2008;
2. Two percent for the period from January 1, 2009 to December 31, 2009;
3. Three percent for the period from January 1, 2010 to December 31, 2010;
4. Four percent for the period from January 1, 2011 to December 31, 2011;
5. Five percent for the period from January 1, 2012 to December 31, 2012;

6. Six percent for the period from January 1, 2013 to December 31, 2013;
7. Seven percent for the period from January 1, 2014 to December 31, 2014;
8. Eight percent for the period from January 1, 2015 to December 31, 2015;
9. Nine percent for the period from January 1, 2016 to December 31, 2016; and
10. Ten percent for the period from January 1, 2017 to December 31, 2017 and for each year thereafter.

Class I resources used to satisfy the requirements of this subsection may not be used to satisfy the requirements of Section 3(B) or Section 4.

- B. Class IA Requirement.** Except as provided in subsection D, beginning January 1, 2020, each competitive electricity provider, including standard offer providers, must account for no less than the percentage specified below of its total kilowatt-hour sales to customers in Maine with electric energy associated with Class IA resources in accordance with the provisions of this Chapter.

1. Two and one-half percent for the period from January 1, 2020 to December 31, 2020;
2. Five percent for the period from January 1, 2021 to December 31, 2021;
3. Eight percent for the period from January 1, 2022 to December 31, 2022;
4. Eleven percent for the period from January 1, 2023 to December 31, 2023;
5. Fifteen percent for the period from January 1, 2024 to December 31, 2024;
6. Nineteen percent for the period from January 1, 2025 to December 31, 2025;
7. Twenty-three percent for the period from January 1, 2026 to December 31, 2026;
8. Twenty-seven percent for the period from January 1, 2027 to December 31, 2027;
9. Thirty-one percent for the period from January 1, 2028 to December 31, 2028;
10. Thirty-five percent for the period from January 1, 2029 to December 31, 2029; and
11. Forty percent for the period from January 1, 2030 to December 31, 2030 and each year thereafter.

Class IA resources used to satisfy the requirements of this subsection may not be used to satisfy the requirements of Section 3(A) or Section 4.

- C. Commission Certification.** Except as otherwise provided, a generation facility may not be used to satisfy the Class I or Class IA requirements of this section unless the Commission certifies the generation facility as a Class I or Class IA resource. A resource may be classified as both a Class I and Class IA resource. A resource must be specifically certified as a qualified hydroelectric facility. All Class I generation facilities certified by

the Commission as of September 19, 2019 are automatically certified as Class IA generation facilities without any filing requirements except those existing generation facilities that were certified as Class I resource on the basis that for at least 2 years the generation facility was not operated or was not recognized by the New England independent system operator as a capacity resource and, after September 1, 2005, resumed operation or was recognized by the New England independent system operator as a capacity resource.

1. **Certification Process.** An owner or operator of a generation facility may seek Commission certification through the submission of a petition for certification. The Commission shall either certify the generation facility as a Class I or IA resource, or both, or state the reasons for the denial of the certification within 90 days of the submission of a complete application. If additional time is required, the Administrative Director may extend the time period for review. The Commission shall provide an opportunity for public comment if the petitioner seeks certification as refurbished resource. The Commission may revoke a certification if there is a material change in circumstance that renders the generation facility ineligible as a Class I or Class IA resource.
 2. **Petition.** The petition for certification shall include the following information:
 - (i) Name and address of petitioner;
 - (ii) Location of the generation facility;
 - (iii) Description of the generation facility, including fuel type, capacity and initial commercial operation date;
 - (iv) The refurbish category for which certification is sought
 - (v) Demonstration of qualification for a comparable portfolio requirement in another state, if applicable;
 - (vi) Historical output and means to determine incremental output, if certification is sought for a facility added to an existing facility;
 - (vii) The time period for which the facility did not operate, the reasons the facility did not operate, and the date operation resumed; if certification is sought for a facility that has resumed operations;
 - (viii) A description of facility refurbishment, the degree to which the useful life has been extended, and the use of an alternate technology and resulting efficiency increases, if certification is sought for a refurbished facility; and
 - (ix) Any other information that the Commission determines to be necessary or useful.
- D. **Alternative Compliance Mechanism.** The Class I and Class IA requirements of this section may be satisfied by an alternative compliance payment according to this

subsection. The payment for an applicable year shall be made to the Commission by July 1 of the following year.

1. **Payment Amount.** The amount of the alternative compliance payment shall equal the alternative compliance payment rate multiplied by the number of deficient kilowatt-hours. For purposes of this subsection, deficient kilowatt-hours are the number of kilowatt-hours required to be served by Class I or Class IA resources minus the number of kilowatt-hours that are actually served by Class I or Class IA resources .
 2. **Payment Rate.** The alternative compliance base rate shall be \$57.12 per megawatt-hour. Beginning in 2008, the Commission will adjust the alternative compliance payment rate by the annual change in the U.S. Bureau of Labor Statistics Consumer Price Index. For each year, the Commission will calculate and publish the alternative compliance payment rate no later than January 31 for applicability in that year. For RPS requirements on or after January 1, 2020, the alternative compliance payment rate shall be \$50.00 per megawatt-hour.
 3. **Use of Funds.** The Commission shall use all funds collected pursuant to this subsection to provide financial assistance for low-income households in accordance with 35-A M.R.S. § 3214(2).
- E. **Suspensions.** Suspensions of scheduled increases in the Class IA requirement of this section are governed by this subsection.
1. **Alternative Compliance Payments.** The Commission shall temporarily suspend all or some of the scheduled percentage increases in the Class IA requirement if the Commission finds that alternative compliance payments made pursuant to subsection D account for more than 10% of the obligations required to satisfy the portfolio requirements for Class IA in 3 consecutive years.
 2. **Insufficient Development.** The Commission may suspend all or some of a scheduled percentage increase in the Class IA requirement if by March 31st of the year 2022 and every 2 years thereafter, the Commission determines that investment in Class IA resources over the preceding two years has not been sufficient for competitive electricity providers to meet the Class I and Class IA requirements and that the resulting use of GIS or NAR certificates or the alternative compliance payment mechanism, or both of these methods, has burdened electricity customers in the State without providing the benefits of Class IA resources. The Commission may suspend all or some of the future scheduled increases in the Class IA requirements.
 3. **Resumption of Scheduled Increases.** Subsequent to any suspension pursuant to this subsection, the Commission may resume increases in the Class IA requirement but such increases are limited to no more than one percentage point per year over the previous year.
- F. **Exemption.** Retail electricity sales pursuant to a supply contract or standard-offer service arrangement that is in effect on or before September 19, 2019, are exempt from the Class IA requirements of this section until the end date of the current term of the supply contract or standard-offer service arrangement. Retail electricity sales pursuant to a

supply contract or standard-offer service arrangement that is in effect on or before September 20, 2007, are exempt from the Class I requirements of this section until the end date of the current term of the supply contract or standard-offer service arrangement.

- G. **Transmission and Subtransmission Customer Options.** A customer receiving service at a transmission or subtransmission voltage level may elect to have its supply exempt from the requirements of the Class IA portfolio requirement contained in this section. The customer must provide the Commission with written notice of the election. The election becomes effective when notice is submitted to the Commission. The election must be made no later than December 31, 2019. If a customer makes an election under this subsection, the election applies through December 31, 2027. A customer may rescind the election by notifying the Commission in writing no later than 30 days after the Commission initiates the second solicitation under title 35-A, section 3210-G. The decision to rescind is effective six months after the date the notice is provided to the Commission. As long as the election remains in effect, all retail sales of electricity to that customer are exempt from the Class IA requirement and no electricity generation, GIS certificates or NAR certificates produced by the customer's or affiliate's generation facility may be used or applied to satisfy the Class IA requirement or participate in long-term contract procurement pursuant to Title 35-A, section 3210-G. Such customers or affiliates will not be subject to the costs or benefits that result from long-term contract procurements pursuant to Title 35-A, section 3210-G. Except for customers receiving standard offer service, a customer has the obligation to inform its competitive electricity provider of an election or rescission pursuant to this subsection. The transmission and subtransmission customer's notification of an election, or subsequent rescission, pursuant to this section will occur through a Commission adopted proceeding.
- H. **Qualified Hydroelectric Output.** Facilities certified as providing qualified hydroelectric output shall comply with the following provisions:
1. **Renewable Energy Credits.** Facilities certified as providing qualified hydroelectric output shall not seek to acquire or transfer Class I and Class 1A RECs associated with generation in excess of the limits specified in section 2(W) of this Chapter. Facilities may acquire or transfer Class II RECs
 2. **Aggregate Production.** When the aggregate limit of production from qualified hydroelectric output has been reached for a particular year, facilities certified as providing qualified hydroelectric output shall not seek to acquire or transfer Class 1 and Class 1A GIS certificates or NAR certificates associated with generation from qualified hydroelectric output. Facilities may acquire or transfer Class II RECs.

§ 4 ELIGIBLE RESOURCE REQUIREMENT; CLASS II

- A. **Requirement.** Each competitive electricity provider, including standard offer providers, must account for no less than 30% of its total kilowatt-hour sales to customers in Maine with electric energy associated with eligible resources in accordance with the provisions of this Chapter.

- B. **Multiplier.** For the purposes of meeting the Class II requirement under this Section, during the period beginning on January 1, 2020 and ending on December 31, 2026, a 300% multiplier is applied to the output of a generator fueled by municipal solid waste in conjunction with recycling that has obtained a solid waste facility license from the Maine Department of Environmental Protection.
- C. **Alternative Compliance Mechanism.** The Class II requirements of this section may be satisfied by an alternative compliance payment according to this subsection. The payment for an applicable year shall be made to the Commission by July 1 of the following year.
1. **Payment Amount.** The amount of the alternative compliance payment shall equal the alternative compliance payment rate multiplied by the number of deficient kilowatt-hours. For purposes of this subsection, deficient kilowatt-hours are the number of kilowatt-hours required to be served by Class II resources minus the number of kilowatt-hours that are actually served by Class II resources.
 2. **Payment Rate.** Unless otherwise changed by Commission Order, the alternative compliance base rate shall be \$5.00 per megawatt-hour.
 3. **Use of Funds.** The Commission shall use all funds collected pursuant to this subsection to provide financial assistance for low-income households in accordance with 35-A M.R.S. § 3214(2).

§ 5 THERMAL ENERGY RENEWABLE REQUIREMENT

- A. **Requirement.** Each competitive electricity provider, including standard offer providers, must demonstrate that it has purchased thermal renewable energy credits in an amount at least equal to the following percentages of its portfolio of supply sources for retail electricity sales in this State other than to customers who have elected to have their supply exempt pursuant to section 3(G) of this Chapter:
1. For calendar year 2021, 0.4%;
 2. For calendar year 2022, 0.8%;
 3. For calendar year 2023, 1.2%;
 4. For calendar year 2024, 1.6%;
 5. For calendar year 2025, 2%;
 6. For calendar year 2026, 2.4%;
 7. For calendar year 2027, 2.8%;
 8. For calendar year 2028, 3.2%;
 9. For calendar year 2029, 3.6%; and

10. For calendar year 2030, and each year thereafter, 4%.

B. **Commission Certification.** A facility may not be used to satisfy the thermal renewable energy requirements of this section unless the Commission certifies the facility as eligible pursuant to this section.

1. **Certification Process.** An owner or operator of a facility may seek Commission certification through the submission of a petition for certification. The Commission shall either certify the facility as eligible, or state the reasons for the denial of the certification within 90 days of the submission of a complete application. If additional time is required, the Administrative Director may extend the time period for review. The Commission may provide an opportunity for public comment prior to making an eligibility determination. The Commission may revoke a certification if there is a material change in circumstance that renders the facility ineligible as a thermal renewable resource.

2. **Petition.** The petition for certification shall include the following information:

- (i) Name and address of petitioner;
- (ii) Location of the thermal energy facility;
- (iii) Location of the end user entity;
- (iv) Description of the thermal energy facility, including form of thermal energy and a means to verify the use of the form of thermal energy;
- (v) The initial commercial operations date, including verification of the commercial operations date;
- (vi) The means by which the thermal energy will be delivered to the end user and the metering or other means certified by the commission necessary to validate the thermal energy generated and transmitted;
- (vii) A demonstration and a means for verification that the thermal energy will be used for heating, cooling, humidity control, process use or other end use to meet a need of the end user that would otherwise be met using another energy source such as electricity or an on-site thermal energy system;
- (viii) A demonstration that the thermal energy facility meets any existing efficiency standards in effect for the sale or installation of the facility or, if no efficiency standards exist, a showing as to the facility's efficiency;
- (ix) A demonstration and a means for verification that the thermal energy will be generated with any efficiency standards established by the Commission in this section;
- (x) Demonstration of qualification for a comparable portfolio requirement in another state, if applicable;

- (xi) Any other information that the Commission determines to be necessary or useful.
- C. **Alternative Compliance Mechanism.** The thermal renewable requirements of this section may be satisfied by an alternative compliance payment according to this subsection. The payment for an applicable year shall be made to the Commission by July 1 of the following year.
- 1. **Payment Amount.** The amount of the alternative compliance payment shall equal the alternative compliance payment rate multiplied by the number of deficient thermal renewable energy credits. For purposes of this subsection, deficient thermal renewable energy credits are the number of thermal renewable energy credits required to be acquired pursuant to this section minus the number thermal renewable energy credits that are actually acquired.
 - 2. **Payment Rate.** Unless otherwise changed by Commission Order, the alternative compliance payment rate shall be \$25.00 per megawatt-hour.
 - 3. **Use of Funds.** The Commission shall deposit all funds collected pursuant to this subsection in the Thermal Energy Investment Fund established pursuant to Title 35-A, section 10128(2).
- D. **Exemption.** Retail electricity sales pursuant to a supply contract or standard-offer service arrangement that is in effect on or before September 19, 2019, are exempt from the thermal requirements of this section until the end date of the current term of the supply contract or standard-offer service arrangement.

§6 PROVIDER OBLIGATIONS

- A. **Annual Obligation.** Except as provided for in subsection B, each competitive electricity provider must satisfy the portfolio requirements of this Chapter over a 12-month compliance period ending on December 31 of each year.
- B. **New Providers.** The compliance period for competitive electricity providers that provide service to customers in Maine for less than a calendar year is as specified in this subsection.
- 1. **Service Greater Than Six Months.** For competitive electricity providers that begin service to customers in Maine prior to July 1 of any year, the portfolio obligations must be satisfied over a compliance period from the beginning of service until the following December 31.
 - 2. **Service Less Than Six Months.** For competitive electricity providers that begin service to customers in Maine on or after July 1 of any year, the portfolio obligations must be satisfied over a compliance period from the beginning of service until the second December 31 following the initiation of service.
- C. **Customer Representation.** If a competitive electricity provider represents to a customer that the provider is selling to the customer a portfolio of supply sources that includes

more Class I, Class IA or eligible resources than is required by this Chapter, the resources used to supply the customers' load may not be used to meet the aggregate requirements of this Chapter.

- D. **Resource Duplication.** GIS certificates or NAR certificates may be used only once to satisfy the Class I requirement, the Class IA requirement or the eligible resource requirement of this Chapter and may not be used to satisfy any other state's portfolio requirements or otherwise sold to customers or other entities.
- E. **Aggregators and Brokers.** The obligations of this Chapter do not apply to aggregators and brokers.
- F. **Pine Tree Zones.** The sale of electricity by a competitive electricity provider to a qualified Pine Tree Development Zone business established under Title 30-A is exempt from the requirements of this Chapter unless the qualified Pine Tree Development Zone business requests the Commission to waive the exemption for that qualified Pine Tree Development Zone business. This subsection is repealed by operation of statute on December 31, 2031.
- G. **Advisory Ruling.** Any competitive electricity provider or interested person may request an advisory ruling from the Commission to determine whether a particular generation facility qualifies for the Class I requirement, the Class IA requirement or the eligible resource requirement of this Chapter or whether particular GIS certificates may be used to satisfy the requirements of this Chapter. The Commission shall provide interested persons with notice and an opportunity to be heard on requests for advisory rulings pursuant to this subsection.

§ 7 VERIFICATION; REPORTING

- A. **Provider Demonstration.** Each competitive electricity provider has the obligation to demonstrate compliance with the portfolio requirements contained in this Chapter.
- B. **Verification Method.** Competitive electricity providers must verify compliance with the portfolio requirements as specified in this subsection.
 - 1. **ISO-NE Control Area.** For electricity or thermal energy generation in the ISO-NE control area, verification of compliance with the portfolio requirements must be through eligible GIS certificates. For purposes of compliance with this provision, all competitive electricity providers must have at least one Maine GIS sub-account.
 - 2. **NMISA Area.** For electricity or thermal energy generation in the NMISA area, verification of compliance with the portfolio requirement must be through eligible NAR certificates.
 - 3. **Compliance.** Competitive electricity providers may verify compliance through any combination of GIS and NAR certificates.
- C. **Other Jurisdictions.** GIS certificates or NAR certificates used to satisfy obligations in other jurisdictions shall not be used to satisfy the portfolio requirements of this Chapter.

- D. **Physical Deliverability.** The source of GIS certificates used to satisfy the portfolio requirements must be electric or thermal energy that is physically delivered to the ISO-NE control area or is located in the ISO-NE control area. The source of NAR certificate used to satisfy the portfolio requirements must be physically delivered to the NMISA area or is located in the NMISA area. For purposes of this Chapter, electric energy physically delivered is energy that is recognized pursuant to the rules of the ISO-NE or NMISA as serving load obligations in New England or is otherwise used to serve electricity load within the ISO-NE or NMISA control areas.
- E. **Multi-Fuel Facilities.** Multi-fuel facilities shall be treated in accordance with the GIS rules or NAR rules, as applicable.
- F. **Pumped-Storage Hydroelectric Facilities.** Pumped-storage hydroelectric facilities shall be treated in accordance with the GIS rules or NAR rules, as applicable.
- G. **Annual Reports.** On or before July 1 of each year, each competitive electricity provider must submit an annual report that contains information that documents compliance with the portfolio requirements of this Chapter over the previous compliance period. At a minimum, the annual report must include the following information for the compliance period:
1. total retail kilowatt-hour sales in Maine;
 2. total retail kilowatt-hour sales in Maine served from Class I, Class IA and eligible resources;
 3. the amount of thermal energy RECs obtained; and
 4. reports from the GIS Administrator or NAR Administrator as applicable;
- Any retail electricity sales for which a competitive electricity provider is claiming an exemption pursuant to the provisions of Sections 3 or 5 must be identified and supported with appropriate documentation in the report.
- H. **Officer Certification.** Each annual report must contain a certification by a corporate officer that the competitive electricity provider has complied with the portfolio requirements of this Chapter and that all eligible GIS certificates or NAR certificates used to satisfy the portfolio requirements in Maine have not been used by the competitive electricity provider to satisfy any load obligations in other jurisdictions.
- I. **Initial Demonstration Statements.** At the time of application for a license pursuant to Chapter 305, each competitive electricity provider must submit an initial demonstration statement. The initial demonstration statement shall contain an estimate of retail sales in Maine over the compliance period and a description of the means by which the competitive electricity provider will comply with the portfolio requirements, including contracts or entitlements to eligible generation facilities.
- J. **Additional Information.** The Commission may at any time request and obtain information from a competitive electricity provider that the Commission determines is needed to monitor or enforce compliance with this Chapter.

- K. **Audits.** The Commission may at any time conduct an audit of any competitive electricity provider to verify compliance with the portfolio requirements of this Chapter. Upon request by the Commission, a competitive electricity provider must provide any information that the Commission determines is needed to conduct the audit and verify compliance with this Chapter.
- L. **Rejection of Certificates.** The Commission may reject the use of certain GIS certificates or NAR certificates as a means to satisfy the portfolio requirements of this Chapter if it finds that the source of GIS certificates or NAR certificates is not a qualifying Class I, Class IA, an eligible resource, or thermal energy, that rejection is necessary to avoid the double counting of electricity attributes or for other good cause.
- M. **Generation Facilities.** The Commission may at any time conduct an investigation into whether a designated generation or thermal energy source is a qualifying Class I, Class IA, an eligible resource, for purposes of this Chapter. The Commission may request and obtain information from a generation or thermal energy facility that the Commission determines is needed to verify qualification pursuant to this Chapter. The Commission may reject the use of GIS certificates or NAR certificates if a generation or thermal energy facility fails to comply with a request for information made pursuant to this provision.
- N. **Confidentiality.** The Commission may subject any information required by this section to appropriate protective orders.

§ 8 NON-COMPLIANCE; SANCTIONS

- A. **Cure Period.** A competitive electricity provider that does not satisfy the Class I, Class IA, eligible resource or thermal energy requirements of this Chapter during a compliance period, but has obtained eligible GIS or NAR certificates that together correspond to at least two-thirds of the Class I, Class IA, eligible resource, or thermal energy portfolio requirements, may cure the deficiency over the next compliance period, so that over the two compliance periods the portfolio requirements of this Chapter are satisfied.
- B. **Banked Compliance.** A competitive electricity provider may satisfy up to one-third of the portfolio requirements of this Chapter in any year through eligible GIS or NAR certificates associated with electricity or thermal energy production in the prior year. GIS or NAR certificates used for compliance pursuant to this provision must be in excess of the prior year requirements and have not been previously used to satisfy a portfolio requirement in another jurisdiction.
- C. **Sanctions.** A competitive electricity provider that does not satisfy the portfolio requirements of this Chapter, allowing for the cure period provided for in subsection A, is subject to one or more of the following sanctions:
 - 1. **License Revocation.** The Commission may revoke the competitive electricity provider's license pursuant to the procedures established in Chapter 305.
 - 2. **Penalties.** The Commission may impose monetary penalties pursuant to the procedures established in Chapter 305.

3. **Other.** The Commission may impose any other sanction authorized by law that it determines appropriate, taking into account the facts and circumstances that resulted in the failure to satisfy the portfolio requirement.
4. **Waiver.** The Commission may waive the imposition of sanctions upon a showing that the competitive electricity provider made good faith efforts but could not reasonably satisfy the portfolio requirements of this Chapter due to market conditions. The Commission shall provide interested persons with notice and an opportunity to be heard prior to waiving the imposition of sanctions pursuant to this paragraph.

§ 9 WAIVER OR EXEMPTION

Upon the request of any person subject to this Chapter or upon its own motion, the Commission may, for good cause, waive any requirement of this Chapter that is not required by statute. The waiver may not be inconsistent with the purposes of this Chapter or Title 35-A. The Commission, the Director of the Electric and Gas Division, or the presiding officer assigned to a proceeding related to this Chapter may grant the waiver.

BASIS STATEMENT: The factual and policy basis for this rule is set forth in the Commission's Order Amending Rule and Statement of Factual and Policy Basis, Docket No. 2023-00225, issued on November 1, 2023. Copies of this Statement and Order have been filed with this rule at the Office of the Secretary of State. Copies may also be obtained from the Administrative Director, Public Utilities Commission, 18 State House Station, Augusta, Maine 04333-0018.

STATUTORY AUTHORITY:

35-A M.R.S. §§ 104, 111, 1301, 3203(9), 3210; P.L. 2021 c. 199, P.L. 2023 c. 361.

EFFECTIVE DATE: This rule was approved as to form and legality by the Attorney General on 11/21/2023. It was filed with the Secretary of State on 11/27/2023 and became effective on 12/2/2023.

EFFECTIVE DATE:

This rule was approved as to form and legality by the Attorney General on October 1, 1999. It was filed with the Secretary of State on October 5, 1999 and became effective on November 4, 1999.

NON-SUBSTANTIVE CORRECTIONS:

November 9, 1999 - APA Office Note added.

AMENDED:

This rule was approved as to form and legality by the Attorney General on June 20, 2003. It was filed with the Secretary of State on June 20, 2003 and became effective on July 20, 2003.

AMENDED:

This rule was approved as to form and legality by the Attorney General on November 5, 2004. It was filed with the Secretary of State on November 9, 2004 and became effective on November 14, 2004. A new Section 6 was inserted and the following sections renumbered.

AMENDED: This rule was approved as to form and legality by the Attorney General on October 31, 2007. It was filed with the Secretary of State on November 1, 2007 and became effective on November 6, 2007 (filing 2007-468).

AMENDED: This rule was approved as to form and legality by the Attorney General on November 27, 2019. It was filed with the Secretary of State on December 2, 2019 and became effective on December 7, 2019 (filing 2019-216).

AMENDED: The Section 4(B) rule provision was approved as to form and legality by the Attorney General on April 7, 2020. It was filed with the Secretary of State on April 7, 2020 and became effective on May 7, 2020 (filing 2020-091).

AMENDED: This rule was approved as to form and legality by the Attorney General on December 9, 2020. It was filed with the Secretary of State on December 10, 2020 and became effective on December 15, 2020 (filing 2020-245).

AMENDED: This rule was approved as to form and legality by the Attorney General on November 10, 2021. It was filed with the Secretary of State on November 16, 2021 and became effective on November 21, 2021 (filing 2021-235).