

**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF ENERGY**

**ELECTRIC RENEWABLE PORTFOLIO STANDARD**

**Adjustment to Renewable Portfolio Standard Class Requirement**

**Order Setting 2021 Class III Obligation**

In this Order, the Department of Energy (Department) decreases the New Hampshire Renewable Portfolio Standard (RPS) Class III requirement for compliance year 2021 from eight percent to one percent, pursuant to RSA 362-F:4, VI. The Department became responsible for administering the RPS, effective as of July 1, 2021, under RSA 362-F, as amended by 2021 N.H. Laws Chapter 91 (House Bill 2-FN-A-Local). Under RSA 362-F:4, VI, the Department 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.

By Order of Notice issued on January 21, 2022, the Department notified stakeholders it would investigate whether it should adjust the RPS Class III requirement (for electric energy generated using eligible biomass or landfill methane gas fuel sources) for compliance year 2021 (CY 2021), which can be satisfied by providers of electricity with renewable energy certificate (REC) purchases made by June 15, 2022 or with alternative compliance payments (ACPs) made by July 1, 2022. To inform its decision, the Department solicited written public comments from stakeholders and held a public comment hearing on the matter.

The Department received public comment relative to: (i) the availability of New Hampshire Class III RECs; and (ii) the demand for New Hampshire Class III RECs based on regional market conditions for CY 2021. The Department held a hearing to receive public comments on March 3, 2022. At that hearing, the Department 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); Constellation New Energy, Inc.; Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty (Liberty); and Windaction Group (Windaction). The Department directed that the record remain open for written comments to be submitted through March 10, 2022.

The order of notice, hearing transcript, 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 Department, are posted on the Department's website at [Adjustment to RPS Class III Requirement | NH Department of Energy](#).

## **I. STAKEHOLDER COMMENTS SUMMARY**

### **A. Bridgewater**

Bridgewater submitted pre-hearing written comments on March 1, 2022 (BPC Comments), commented orally during the hearing on March 3, 2022, and submitted supplemental written comments on March 10, 2022. Bridgewater stated that it has sold most of its RECs for Connecticut Class I compliance, and stated concerns about obligation reduction precedent leading to artificially low sales when a shortage situation is actually not present.

BPC also noted that, starting in compliance year 2022, as is reflected in a recent notice from the Connecticut Department of Energy and Environmental Protection, there will be a significant reduction in the amount of biomass electric generation qualified for Connecticut Class I RECs, and BPC stated its belief that changed will impact Bridgewater and as all other biomass generating facilities in New Hampshire for RPS compliance years beginning in 2022. That reduction will be significant, where previously 100% of biomass facility generation output

qualified for Connecticut Class I RECs, now only 50% will be eligible as of compliance year 2022, and that percentage will gradually phase down by increments of 50% in succeeding years.

**B. Eversource**

Eversource commented at the March 3 hearing, representing that through that date it had not purchased any Class III RECs for CY 2021 compliance, it has a significant amount of banked RECs, and in order to use all of its banked RECs, the 2021 Class III obligation should be reduced to no less than 1.2%.

**C. NHEC**

The NHEC submitted pre-hearing written comments on March 3, 2022 (NHEC Comments) and commented at the hearing, stating that there is currently a scarcity of Class III RECs and recommending reduction of the 2021 Class III obligation to 0.5% of annual sales.

**D. Constellation**

Constellation commented at the hearing and submitted written comment thereafter, stating that its supports the NHEC Comments that there is short supply of Class III-eligible RECs, and the obligation should be reduced to the full extent permitted or 85% of the reasonably expected potential annual output of available eligible sources, after taking into account demand from similar programs in other states.

**E. Liberty**

Liberty commented at the hearing, stating that it had a significant number of banked RECs that it may not be able to use to meet the Class III obligation due to the 30% banking limitation. Liberty further represented that it had not purchased any 2021 RECs and had no current plans to purchase any 2022 Class III RECs, given current uncertainties in the market and with respect to the compliance obligation level.

## **F. The Windaction Group**

Windaction submitted pre-hearing written comments on March 3, 2022 and commented at the hearing, stating that, based on the analysis it had performed, there are estimated to be 175,000 Class III RECs still remaining available for sale and recommending administratively lowering the Class III obligation level to 1.7% in order to match that anticipated supply. Windaction also noted the Connecticut RPS program changes and the potential future impact of those changes.

## **II. ANALYSIS AND CONCLUSION**

Pursuant to RSA 362-F:4, VI, after notice and hearing, the Department may modify the RPS 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.”

In prior years, that authority rested with the Public Utilities Commission (Commission), which historically found good cause to reduce the Class III compliance obligation for a particular year based on a showing that Class III RECs were reasonably expected to be unavailable for New Hampshire RPS compliance because those RECs would be used for compliance in other states with higher ACP rates. *See, e.g.*, Order No.26,472 at 8 (April 20, 2021) (“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.”); 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.”); 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”).

Based on the comments received, it appears that, once again for the 2021 compliance year, there is unlikely to be a significant number of Class III RECs available to meet the New Hampshire obligation, due to both reduced total production of Class III-eligible RECs and the strong likelihood that eligible RECs will be used for compliance in other states. 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 \$34.99 for CY 2021, which has caused providers to purchase available Class III RECs for settlement in other states within the regional marketplace. *See* RSA 362-F:10, II. Accordingly, it is appropriate to exercise the Department’s authority under RSA 362-F:4, VI to reduce the Class III RPS obligation for CY 2021.

In determining how much to reduce that obligation, the total amount of Class III-eligible RECs produced through the third quarter of CY 2021 was reviewed, as well as the number of Class III-eligible RECs produced during the fourth quarter of CY 2020, as that data is available through public reports posted by NEPOOL GIS.<sup>1</sup> Available banked RECs were also reviewed, as was publicly-available information such as quarterly emissions reports filed by Class III-certified biomass facilities that indicate a number of facilities were non-operational throughout 2021. The current ACP rates in other states, including Connecticut and Massachusetts, and public comments regarding the demand for RECs in other states, the supply of available RECs, and relevant market conditions, were also considered by the Department.

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<sup>1</sup> GIS Certificate Statistics. Available online at <https://www.nepoolgis.com/public-reports/>

A total of 522,776 RECs were minted with New Hampshire Class III eligibility through the third quarter of 2021. In the absence of fourth quarter REC data for CY 2021, which will not be available in full until after April 15, 2022, Class III eligible REC data for the fourth quarter of 2020 represents a reasonable proxy for estimating the quantity of Class III RECs available for purchase for quarter four of CY 2021 (prior to consideration of regional marketplace dynamics driving available REC supply to Connecticut and Massachusetts). A total of 146,931 RECs were minted with New Hampshire Class III eligibility for the fourth quarter of 2020. For purposes of this analysis, it is assumed that a similar quantity of Class III-eligible RECs was produced during the fourth quarter of 2021. Those assumptions support a total Class III production estimate of 669,707 RECs, a quantity lower than past years' Class III REC-eligible production.

While public comment by biomass generation representatives in 2020 reported some Class III REC availability, for CY 2021 Bridgewater represented that most NH Class III-eligible RECs have been sold into the Connecticut market. In addition, quarterly emissions reports provided to the Department of Environmental Services by Class III-certified biomass facilities indicates that a number of those facilities were non-operational for all of 2021, strongly suggesting that reduced Class III-eligible electricity generation occurred during CY 2021. An alternative analysis provided by Windaction concluded there should be approximately 175,000 Class III RECs available for settlement into New Hampshire, after consideration of demand from RPS programs in other states, representing roughly 1.7% of the total 8% statutory compliance obligation.

Department records indicate that slightly fewer banked RECs would be available for use in CY 2021 as compared to CY 2020, and electric utilities indicated fewer current-year purchases than were reported in connection with the CY 2020 RPS Class III review. Limited

comments were provided regarding electricity providers' intentions to use banked RECs, based primarily on Eversource's and Liberty's representations as to the relatively high number of Class III RECs already purchased and available as banked RECs to meet CY 2021 compliance. Neither of those two utilities indicated that they had purchased Class III RECs for CY 2021 compliance and both suggested they would be disinclined to do so as a result of the 30% banking limitation imposed by statute.

Public commenters proposed a range of reductions to the CY 2021 Class III obligation, from a bare minimum obligation (Constellation Energy, First Point Power), to a reduced level of 0.5% (NHEC), 1.2% (Eversource); and 1.7% (Windaction). For the purpose of comparison, the total Class III RECs used for CY 2020 compliance represented approximately 1.6% of total retail sales while the CY 2020 Class III obligation was set at 2.0%. Based on the public comments and Department analysis, it is likely there will be lower availability of Class III RECs for New Hampshire CY 2021 compliance than were available for CY 2020, but that the availability is more than zero, even after taking into account regional market conditions. The CY 2021 Class III RPS obligation therefore will be set at one percent (1.0%) of the total retail sales by each electricity provider to its end-use customers. That level is believed to reflect a reasonable approximation of Class III REC availability falling within the 85% to 95% range specified in the RPS statute.

Several stakeholders also submitted comments with respect to the timing of any decision to modify the RPS Class III compliance requirement for a specific compliance year, generally in support of performing the analysis for the modification earlier in the compliance year. For the reasons summarized below, that timing change will not be directed at this time. The timing

question involves a significant tradeoff between earlier regulatory certainty and greater confidence in the information providing the basis for that decision-making.

For example, significant REC-eligible electricity production data from GIS and other sources would not be available at earlier times during the compliance year. In addition, the retail sales data used to determine compliance obligations for each year are not required to be submitted to the Department until February 1<sup>st</sup> following the end of each calendar year, so moving the review timeframe to occur prior to that submission would result in the need for additional estimation regarding the obligation itself. And the changes to take place beginning in 2022 in the Connecticut RPS program may create significantly greater uncertainty regarding available supply estimation for future years.

Additional comments included support for cost recovery by utilities with high numbers of banked RECs for which the obligation change will reduce the number of banked RECs they can use for compliance. However, decisions regarding any such recovery of “stranded” RPS compliance costs, given the two-year and 30% limitations on REC banking,<sup>2</sup> must be made not by the Department but by the Commission, following an adjudicative proceeding in which the Department will participate as a party. Accordingly, the Department will not take any action based on those comments.

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

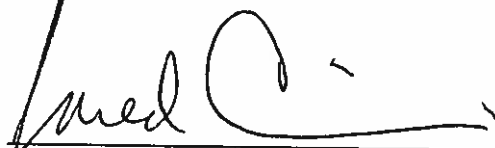
**ORDERED**, that, pursuant to RSA 362-F:4, VI, the New Hampshire Renewable Portfolio Standard Class III requirement for the 2021 compliance year is set at one percent of retail electricity sales.

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<sup>2</sup> Under RSA 362-F:7, I, RECs shall only be used by electricity providers for compliance with the RPS requirements in the year in which the generation represented by the RECs were produced, “except that unused certificates of the proper class issued for production during the prior 2 years may be used to meet up to 30 percent of a provider's requirements for a given class obligation in the current year of compliance.”



So ordered this 31<sup>st</sup> day of March, 2022.



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Jared S. Chicoine  
Commissioner