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STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

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COMMISSIONERS

January 15, 2011

Honorable Michael Thibodeau, Senate Chair  
Honorable Stacey Fitts, House Chair  
Energy, Utilities and Technology Committee  
115 State House Station  
Augusta, Maine 04333-0100

**Re: Report on Community-Based Renewable Energy Pilot Program**

Dear Senator Thibodeau and Representative Fitts:

During the 2009 session, the Legislature enacted "An Act To Establish the Community-Based Renewable Energy Pilot Program (Act)," which provides incentives for the development of community-based renewable projects. This Act requires the Public Utilities Commission to provide a report to this Committee no later than January 15, 2011. We hereby submit the Report on Community-Based Renewable Energy Pilot Program as requested by the required deadline.

Thank you for your attention to this matter. If you have any questions regarding the report, please do not hesitate to contact us.

Sincerely,

John A. Cashman  
Chairman

On behalf of:

Vendean V. Vafiades  
and  
David Littell  
Commissioners  
Maine Public Utilities Commission

cc: Members, Joint Standing Committee on Energy, Utilities and Technology  
Jean Guzzetti, Legislative Analyst  
Jon Clark, Esq., OPLA Deputy Director

**Report by the Public Utilities Commission  
Community-Based Renewable Energy Pilot Program  
January 15, 2011**

**I. INTRODUCTION**

During the 2009 session, the Legislature enacted An Act To Establish the Community-based Renewable Energy Pilot Program (Act).<sup>1</sup> Part A of the Act establishes a community-based renewable energy pilot program, to be administered by the Commission, to encourage the sustainable development of community-based renewable energy projects.<sup>2</sup> In summary, the Act provides incentives, on a pilot program basis, for the development of community-based renewable projects.

The Act requires the Commission to provide biennial reports to the Legislature on the pilot program.<sup>3</sup> Specifically, the Act provides:

The Commission shall develop and administer a system to register and track the development of community-based renewable energy projects and by January 15, 2011 and biennially by January 15th thereafter shall report to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters on the program and the development of community-based renewable energy projects. The report must include, but is not limited to:

**1. Community-based renewable energy development.**

Documentation of the progress of community-based renewable energy development, including the number of community-based renewable energy projects in the State, the generating capacity of those projects and the kilowatt-hours of electricity purchased from community-based renewable energy projects; and

**2. Program implementation; assessment; recommendations.**

Actions taken by the Commission to implement the program, an assessment of the effectiveness of the program with respect to encouraging the sustainable development of community-based renewable energy in the State and recommendations, including any necessary implementing legislation, to improve the program

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<sup>1</sup> P.L. 2009, Ch. 329. A copy of the Act is attached to this Report as Attachment 1.

<sup>2</sup> 35-A M.R.S.A. §§ 3601-3609.

<sup>3</sup> 35-A M.R.S.A. § 3607.

In addition, Section A-6 of the Act provides:

In the report due January 15, 2011 under the Maine Revised Statutes, Title 35-A, section 3607, the Public Utilities Commission shall provide recommendations regarding policy options, including but not limited to financial incentives, to encourage the development of community-based renewable energy projects in economically disadvantaged areas of the State. For the purposes of this section, "economically disadvantaged areas" includes, but is not limited to, communities, counties and other geographic areas of the State in which the average weekly wage is below the state average weekly wage or the unemployment rate is greater than the state unemployment rate.

The Commission hereby submits its report to the Energy, Utilities and Technology Committee on the status of the community-based renewable energy pilot program.

## II. OVERVIEW OF THE PILOT PROGRAM

As stated above, the Act provides incentives, on a pilot program basis, for the development of community-based renewable projects. The pilot program runs through the end of 2015.

A community-based renewable energy project is defined as a "locally owned electricity generating facility" that generates electricity from "eligible renewable resources." A locally owned electricity generating facility is a facility that at least 51% is owned by "qualifying local owners," which are:

- An individual who is a resident of the State;
- A political subdivision of the State, including, but not limited to, a county, municipality, quasi-municipal corporation or district as defined in Title 30-A, section 2351, school administrative unit as defined in Title 20-A, section 1, public or private institution of higher education, regional council of governments or any other local or regional governmental organization, including, but not limited to, a board, commission or association;
- A department, agency or instrumentality of the State;
- A federally recognized Indian tribe located in the State;
- A nonprofit corporation, organized under the laws of the State, including a unit owners association organized under Title 33, section 1603-101; or
- A business corporation, organized under the laws of the State, at least 51% of which is owned by one or more residents of the State.

Eligible renewable resources are defined as:

- o fuel cells
- o tidal power
- o solar arrays and installations
- o geothermal installations
- o hydroelectric generators that meet all state and federal fish passage requirements applicable to the generator
- o biomass generators that are fueled by wood or wood waste, landfill gas or anaerobic digestion of agricultural products, by-products or wastes
- o wind power installations.

The installed generating capacity of each project must not exceed 10 megawatts (MW) and the total capacity limit of the pilot program is 50MW. The total installed generating capacity in the service territory of any investor-owned transmission and distribution (T&D) utility may not exceed 25 MW and the Commission is directed to set the capacity limit within the territories of the three investor-owned T&D utilities (Central Maine Power Company (CMP), Bangor Hydro Electric Company (BHE) and Maine Public Service Company (MPS)).<sup>4</sup>

To qualify to participate in the program, projects must have an in-service date after September 1, 2009, and projects greater than 100 kilowatts (kW) must obtain a resolution of support from the municipal legislative body in which the project is located.

Once qualified as a community-based renewable energy project, the participant has the option to elect one of two incentive mechanisms: 1) a long-term contract for the output of the project with one of the investor-owned T&D utilities; or 2) a renewable energy credit (REC) multiplier (in which the value of the REC is 150% of the amount of the produced electricity). The participant may elect a contract for up to 20 years at prices based on the cost of the facility up to 10 cents per kilowatt-hour (kWh), a price that is currently significantly above the market price of power. The Act directs the Commission to conduct a competitive solicitation for projects that are one megawatt or greater. For projects that are less than one megawatt, the Act requires the Commission to establish by rule prices for wind power installations, solar arrays, and other resource types upon request. In the event a participant chooses the REC multiplier, RECs associated with the project will have a value that is fifty percent greater than the market value for RECs eligible to satisfy Maine's renewable resource portfolio requirement.<sup>5</sup>

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<sup>4</sup> The consumer owned utilities, which are municipal utilities or cooperatives, are not required to participate in the pilot program.

<sup>5</sup> RECs are tradable instruments that are used to satisfy New England states portfolio requirements. They have a value that varies over time with changes in market conditions.

### III. IMPLEMENTING RULES

On January 27, 2010, the Commission issued an Order adopting the rules to implement the community-based renewable energy pilot program (Chapter 326).<sup>6</sup> The rules establish the individual utility service territory capacity limits based on the utilities' relative peak load. The established limits are: CMP-25MW; BHE-11MW, and MPS-4MW. As specified in the Act, the rules state that, unless the Commission determines otherwise, the total capacity amount of pilot program projects located in the service territories of consumer-owned utilities or projects or that are less than 100kW may not exceed 10MW. These capacity limits are consistent with the total program cap of 50MW that is contained in the Act.

The rules also adopted long-term contract prices for projects that are less than one megawatt. The Commission set a contract price of 10 cents/kWh for wind power, solar array and hydroelectric installations. Subsequently, the Commission by order, issued August 4, 2010, established a contract price of 10 cents/kWh for anaerobic digestion installations.<sup>7</sup>

Finally, the rules establish a process for the owner or developer of a generating project to seek certification from the Commission as a community-based renewable energy project. The rules specify the information to include in a petition for certification, including information to demonstrate that the project meets the statutory qualifications for program eligibility.

### IV. PROJECT CERTIFICATIONS

Subsequent to the adoption of the implementing rules, the Commission has certified two projects as community-based renewable energy projects. On April 24, 2010, the Commission issued an Order certifying Fox Islands Wind, LLC, a 4.5 MW wind project located on Vinalhaven, Maine that began commercial operations on December 1, 2009.<sup>8</sup> Fox Islands Wind has chosen the REC multiplier incentive. On November 25, 2010, the Commission issued an Order certifying Exeter Agri-Energy LLC, a 980kW anaerobic digester system to be located on the Fogler Farm in Exeter, Maine.<sup>9</sup> Exeter Agri-Energy anticipates choosing the long-term contract incentive, but has not sought a contract. The project has not yet been developed.

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<sup>6</sup> Docket No. 2009-363. A copy of Chapter 326 is attached to this Report as Attachment 2.

<sup>7</sup> Docket No. 2010-174.

<sup>8</sup> Docket No. 2010-65.

<sup>9</sup> Docket No. 2010-141.

The Commission rejected one petition for certification. On September 8, 2010, the Commission issued an order rejecting certification of an 8MW combined heat and power facility to be developed by Maine Renewable Energy Consortium.<sup>10</sup> The Commission rejected the petition because the proposed project would use natural gas, a non-eligible fuel, if the cost was cheaper than biomass derived power.

## V. EFFECTIVENESS OF THE PROGRAM

As stated above, the Commission has certified only two projects as eligible community-based renewable energy projects, and no project has entered into a long-term contract with a T&D utility. Thus, the effectiveness of the pilot program to date can be characterized as limited. In the Commission's view, this lack of effectiveness is not the result of a lack of knowledge by potential developers of the existence of the program. Subsequent to the establishment of the program, the Commission has received numerous inquiries regarding the program and the process for certification.

The Commission suspects that the primary cause of the limited participation in the program is the 10 cents/kWh cap on long-term contract prices. Although 10 cents/kWh is substantially above the current wholesale price for electricity (which is in the range of five cents/kWh), it appears too low to cover the cost of developing small community renewable energy projects.

In addition, the REC multiplier, at current REC prices for Maine and the other New England state, does not appear to provide a meaningful incentive. Currently, prices for Maine RECs are relatively low and lower than prices for RECs in other New England states. As a result, even with the 150% multiplier, the incentive of selling RECs at prices that are 50% above market prices for Maine RECs would appear to provide limited financial assistance to support the development of small renewable energy projects.

## VI. INCENTIVES FOR ECONOMICALLY DISADVANTAGED AREAS

As stated above, Section A-6 of the Act directs the Commission to provide in its 2011 report to the Legislature information on policy options to encourage the development of community-based renewable energy projects in economically disadvantaged areas in the State. To obtain information and viewpoints from interested persons on such policy options, the Commission, on May 5, 2010, initiated an Inquiry.<sup>11</sup>

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<sup>10</sup> Docket No. 2010-176.

<sup>11</sup> *Inquiry into Community-Based Renewable Energy Development in Economically Disadvantaged Areas*, Docket No. 2010-138 (May 5, 2010).

The town of Madison, the Island Institute, and Northern Power Systems provided comments in response to the Inquiry.<sup>12</sup>

The commenters in the Inquiry discussed several approaches to encourage small renewable resource development in economically disadvantaged area in the State. These include:

- Increase the incentive contract price above the currently established 10 cents/kWh;
- Require consumer-owned utilities to enter into long-term contracts for the output from small renewable projects;
- Provide funding or other incentives (e.g., loans, grants) for feasibility studies and pre-development work; and
- Establish fast track environmental permitting.

As discussed in Section V of this Report, the primary barrier to the success of the pilot program appears to be that the 10 cents/kWh cap on the long-term contract prices is not high enough for small renewable projects to recover their development and operation costs. This barrier exists regardless of the economic status of the particular area in the State in which a project may be located. The issues of whether to increase the contract price cap, as well as whether to adopt other suggestions to encourage renewable resource development in economically disadvantaged area in the State, are energy policy matters for the Legislature. Accordingly, the Commission makes no recommendations in this regard.

## **VII. FEDERAL PREEMPTION**

On July 15, 2010, the Federal Energy Regulatory Commission (FERC) issued a declaratory order that raised questions as to whether state incentive programs, like Maine's community-based renewable energy pilot program, may be preempted by federal law.<sup>13</sup> The California Public Utilities Commission (CPUC) adopted a program that required utilities to purchase energy from certain combined heat and power facilities at specified prices. The FERC ruled that the CPUC program is not preempted as long as utilities are not required to purchase energy at rates that are above their "avoided

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<sup>12</sup> All comments filed in this Inquiry are posted on the Commission's virtual case file, [www.main.gov/mpuc](http://www.main.gov/mpuc), through reference to Docket No. 2010-138.

<sup>13</sup> *California Public Utilities Commission, Order on Petitions for Declaratory Order*, Docket No. EL10-64-000 (July 15, 2010).



costs,” which are generally the costs which a utility can generate or purchase power. This decision raised uncertainty regarding state programs in which utilities are required to purchase power from specified categories of resources at predetermined prices that may be considered as over avoided or market costs.

However, on October 21, 2010, the FERC issued an order clarifying its earlier ruling, stating that state determinations of “avoided costs” may take into account legal requirements or limitations regarding alternative supply obligations imposed by state law.<sup>14</sup> Therefore, if state law requires the purchase of energy from specified resources or technologies, prices may be established for those resources or technologies based on their underlying cost structures. Because Maine’s community-based renewable energy pilot program pre-establishes prices for specific categories of renewable facilities based on their cost, the program is consistent with the FERC clarifying order. Accordingly, the Commission does not recommend any changes to the current law at this time based on federal preemption concerns.

## **VIII. CONCLUSION**

As stated in this Report, participation in the community-based renewable energy pilot program has been limited. To date, only two projects have been certified as eligible to participate in the program: 1) a 4.5 MW wind project located on Vinalhaven, Maine; and 2) a 980 kW anaerobic digester system to be located on the Fogler Farm in Exeter, Maine. There have been no long-term contracts executed with utilities pursuant to the pilot program.

As discussed in Section V of this Report, the Commission suspects that the primary cause of the limited participation in the program is the 10 cents/kWh cap on long-term contract prices, which appears too low to cover the cost of developing smaller renewable energy projects. Moreover, due to the relatively low current market prices for Maine RECs and higher prices for RECs in other New England states, the REC multiplier does not appear to provide a sufficient incentive for the development of small renewable projects. The Commission is not endorsing any changes that would raise the cap in making these observations.

The community-based renewable energy pilot program provides incentives for the development of small renewable projects in the State. The primary incentive is the availability of long-term contracts to sell energy to utilities at above market costs. As such, the pilot program provides financial support to small renewable projects that are paid for by the general body of electricity ratepayers in the State. Long-term contracts

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<sup>14</sup> *California Public Utilities Commission, Order Granting Clarification*, Docket No. EL10-64-001 (October 21, 2010).

can provide an effective incentive mechanism if the contract prices are set high enough to cover the development and operation costs of projects. Because the program provides financial support to projects paid for by electricity ratepayers through higher transmission and distribution rates, the question as to whether the contract cap price should be raised (or whether there should be other changes to the program) to increase participation is a question of energy policy for the Legislature. The Commission, accordingly, takes no position on whether the program incentives should be enhanced. In the event the Legislature decides to explore changes to the program, the Commission will provide input during the process as to options to increase participation while minimizing the costs of any modified incentives.

PLEASE NOTE: The Office of the Revisor of Statutes *cannot* perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

**Public Law**  
124th Legislature  
First Regular Session  
**Chapter 329**  
**H.P. 742 - L.D. 1075**

**An Act To Establish the Community-based Renewable Energy Pilot Program**

**Be it enacted by the People of the State of Maine as follows:**

**PART A**

**Sec. A-1. 5 MRSA §1766-A**, as enacted by PL 2007, c. 52, §1, is amended to read:

**§ 1766-A. Electricity purchases for state buildings**

No later than January 1, 2010, all electricity consumed in state-owned buildings must be supplied by renewable resources. For purposes of this section, “renewable resource” ~~means any renewable resource defined~~ has the same meaning as in Title 35-A, section 3210, subsection 2, paragraph C. In purchasing electricity for state-owned buildings, the State may give preference to electricity generated by community-based renewable energy projects, as defined in Title 35-A, section 3602, subsection 1.

**Sec. A-2. 35-A MRSA §3210, sub-§8**, as amended by PL 2007, c. 403, §6, is further amended to read:

**8. Credit trading.** The commission shall allow competitive electricity providers to satisfy the portfolio requirements of subsections 3 and 3-A through the use of renewable energy credits if the commission determines that a reliable system of electrical attribute trading exists. When renewable energy credits are used to satisfy the portfolio requirements of subsections 3 and 3-A, the value of a renewable energy credit for electricity generated by a community-based renewable energy project, as defined in section 3602, that is participating in the community-based renewable energy pilot program established in section 3603 and elects the renewable energy credit multiplier under section 3605 is 150% of the amount of the electricity.

**Sec. A-3. 35-A MRSA §3212, sub-§4-D** is enacted to read:

**4-D. Community-based renewable energy.** The commission may incorporate energy generated by community-based renewable energy projects as defined in section 3602, subsection 1 into the supply of standard-offer service. The commission shall encourage entities based in this State that are not otherwise either a standard-offer service provider or its affiliate to participate in supplying energy from community-based renewable energy projects pursuant to this subsection.

**Sec. A-4. 35-A MRSA c. 36** is enacted to read:

**CHAPTER 36**

## COMMUNITY-BASED RENEWABLE ENERGY

### § 3601. Short title

This chapter may be known and cited as “the Community-based Renewable Energy Act.”

### § 3602. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. **Community-based renewable energy project.** “Community-based renewable energy project” means a locally owned electricity generating facility that generates electricity from an eligible renewable resource.

2. **Eligible renewable resource.** “Eligible renewable resource” means a renewable resource as defined in section 3210, subsection 2, paragraph C, except that “eligible renewable resource” does not include a generator fueled by municipal solid waste in conjunction with recycling and does include a generator fueled by landfill gas. “Eligible renewable resource” includes a biomass generator whose fuel includes anaerobic digestion of agricultural products, byproducts or wastes.

3. **Locally owned electricity generating facility.** “Locally owned electricity generating facility” means an electricity generating facility at least 51% of which is owned by one or more qualifying local owners.

4. **Program participant.** “Program participant” means a community-based renewable energy project that is participating in the community-based renewable energy pilot program established in section 3603.

5. **Qualifying local owner.** “Qualifying local owner” means a person or entity that is:

A. An individual who is a resident of the State;

B. A political subdivision of the State, including, but not limited to, a county, municipality, quasi-municipal corporation or district as defined in Title 30-A, section 2351, school administrative unit as defined in Title 20-A, section 1, public or private institution of higher education, regional council of governments or any other local or regional governmental organization, including, but not limited to, a board, commission or association;

C. A department, agency or instrumentality of the State;

D. A federally recognized Indian tribe located in the State;

E. A nonprofit corporation, organized under the laws of the State, including a unit owners association organized under Title 33, section 1603-101; or

F. A business corporation, organized under the laws of the State, at least 51% of which is owned by one or more residents of the State.

### § 3603. Community-based renewable energy pilot program

1. **Program established.** The community-based renewable energy pilot program, referred to in this section as “the program,” is established to encourage the sustainable development of community-based renewable energy in the State. The program is administered by the commission.

**2. Program scope; limits on generating capacity.** The commission shall limit participation in the program in accordance with this subsection.

- A. The installed generating capacity of a program participant may not exceed 10 megawatts.
- B. The total installed generating capacity of all program participants combined may not exceed 50 megawatts.
- C. The total installed generating capacity of program participants within the service territory of a single investor-owned transmission and distribution utility may not exceed 25 megawatts, unless a higher capacity limit is authorized by the utility and approved by the commission. The commission shall determine a generating capacity limit for the service territory of each investor-owned transmission and distribution utility at the outset of the program, taking into consideration the utility's electric load and share of electricity market in the State. The commission may modify the generating capacity limit under this paragraph based on program experience.
- D. Of the 50-megawatt limit on total generating capacity under paragraph B, 10 megawatts must be reserved at the outset of the program for program participants that:
  - (1) Have an installed generating capacity of less than 100 kilowatts; or
  - (2) Are located in the service territory of a consumer-owned transmission and distribution utility.

The commission may modify the amount of generating capacity reserved under this paragraph based on program experience.

- E. The total installed generating capacity of program participants that receive the renewable energy credit multiplier incentive under section 3605 may not exceed 10 megawatts.

**3. Program eligibility criteria.** To be eligible to participate in the program, a community-based renewable energy project must:

- A. Provide documentation of a resolution of support passed by the municipal legislative body or municipal officers, as appropriate, of the municipality in which the community-based renewable energy project is proposed to be located, except that any project that is proposed to be located wholly in an unorganized or deorganized area of the State or that has a generating capacity of less than 100 kilowatts is exempt from the requirement set forth in this paragraph;
- B. In the case of a community-based renewable energy project proposed to be located on the tribal land or territory of a federally recognized Indian tribe in this State, including any land owned by the tribe or held in trust by the United States for the tribe, provide documentation that the tribe supports the community-based renewable energy project;
- C. Be connected to the electric grid of this State;
- D. Have an in-service date after September 1, 2009; and
- E. Satisfy the limits on generating capacity established in subsection 2.

The commission shall prescribe an application form or procedure that must be used to apply to the

program under this chapter. The application form or procedure must include any information that the commission determines necessary for the purpose of administering the program. The commission shall, within 30 days of receipt of a completed application, determine whether a community-based renewable energy project qualifies to participate in the program and respond in writing.

**4. Program incentives.** Subject to the requirements of subsection 2, a program participant may elect one of the following program incentives:

A. A long-term contract for community-based renewable energy pursuant to section 3604; or

B. The renewable energy credit multiplier pursuant to section 3605.

**§ 3604. Long-term contracts for community-based renewable energy**

Long-term contracts with program participants who elect the long-term contract for community-based renewable energy pursuant to section 3603, subsection 4, paragraph A are governed by this section.

**1. Investor-owned transmission and distribution utilities; required participation.**

Notwithstanding section 3204, the commission may direct investor-owned transmission and distribution utilities to enter into long-term contracts with program participants located within the service territory of the utility for energy, capacity resources or renewable energy credits. The commission may direct investor-owned transmission and distribution utilities to enter into contracts under this subsection only as agents for their customers and only in accordance with this section. An investor-owned transmission and distribution utility shall sell energy, capacity resources or renewable energy credits purchased pursuant to this subsection into the wholesale electricity market or take other action relative to such energy, capacity resources or renewable energy credits as directed by the commission.

**2. Consumer-owned transmission and distribution utilities; voluntary participation.**

A consumer-owned transmission and distribution utility may, at the option of the utility, enter into long-term contracts with program participants located within the service territory of the utility for energy, capacity resources or renewable energy credits. Consumer-owned transmission and distribution utilities may enter into contracts under this subsection only as agents for their customers and only in accordance with this section.

**3. Sale of energy; contract procedures.** Energy, capacity resources or renewable energy credits contracted in long-term contracts pursuant to this section may be sold into the wholesale electricity market in conjunction with solicitations for standard-offer supply bids under section 3212 or solicitations for green power offer bids under section 3212-A. To the greatest extent possible, the commission shall develop procedures for long-term contracts for transmission and distribution utilities under this section having the same legal and financial effect as the procedures used for standard-offer service pursuant to section 3212 for transmission and distribution utilities.

**4. Contract term.** A contract entered into pursuant to this section may not be for more than 20 years.

**5. Contract pricing; cost containment.** The commission shall ensure that in any contract entered into pursuant to this section:

A. The average price per kilowatt-hour within each contract year does not exceed 10¢; and

B. The cost of the contract does not exceed the cost of the project plus a reasonable rate of return

on investment as determined by the commission.

**6. Competitive solicitation process and contract negotiation; large generators.**

For program participants with a generating capacity of one megawatt or more, the commission shall, in accordance with this subsection, conduct competitive solicitations for long-term contracts. The commission shall require that bids include full project cost disclosure. Following a review of bids received, the commission may negotiate with one or more potential suppliers. The commission shall negotiate contracts that are commercially reasonable and that commit all parties to commercially reasonable behavior. In selecting program participants for contracting pursuant to this subsection, the commission shall select program participants that are competitive and the lowest priced when compared to other available bids of the same or similar contract duration or terms.

**7. Contract administration; small generators.** For program participants with a generating capacity of less than one megawatt, the commission shall administer long-term contracts at prices established by the commission by rule. The commission shall, at a minimum, establish prices for energy generated by the following renewable resources:

- A. Wind power installations;
- B. Solar arrays and installations; and
- C. Any other renewable resource upon request of one or more community-based renewable energy generators that use that resource.

The commission shall establish prices under this subsection based on an analysis of reasonable costs and may establish different prices for different resources or technologies and different prices by time of generation in accordance with that analysis.

**8. Cost recovery.** The commission shall ensure that a transmission and distribution utility recovers in rates all costs of contracts entered into under this section, including but not limited to any effects on the utility's costs of capital. A price differential existing at any time during the term of the contract between the contract price and the prevailing market price at which the energy is sold must be reflected in rates and may not be considered to be imprudent.

**9. Contract payments.** Contracts for capacity and related energy entered into pursuant to this section must provide that payments will be made only after contracted amounts of energy have been provided.

**10. Ratepayer protection.** The commission shall ensure that mechanisms are established to provide protections for ratepayers over the term of contracts entered into pursuant to this section.

**§ 3605. Renewable energy credit multiplier**

The renewable energy credit multiplier is governed by this section. The value of a renewable energy credit for electricity generated by a program participant that elects the renewable energy credit multiplier under section 3603, subsection 4, paragraph B is 150% of the amount of the electricity. When a program participant elects the renewable energy credit multiplier, the multiplier must be accounted for when renewable energy credits are used to satisfy the portfolio requirements of section 3210, subsections 3 and 3-A.

**§ 3606. Rules**

The commission shall adopt rules to implement this chapter. Rules adopted under this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**§ 3607. Tracking; biennial report**

The commission shall develop and administer a system to register and track the development of community-based renewable energy projects and by January 15, 2011 and biennially by January 15th thereafter shall report to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters on the program and the development of community-based renewable energy projects. The report must include, but is not limited to:

**1. Community-based renewable energy development.** Documentation of the progress of community-based renewable energy development, including the number of community-based renewable energy projects in the State, the generating capacity of those projects and the kilowatt-hours of electricity purchased from community-based renewable energy projects; and

**2. Program implementation; assessment; recommendations.** Actions taken by the commission to implement the program, an assessment of the effectiveness of the program with respect to encouraging the sustainable development of community-based renewable energy in the State and recommendations, including any necessary implementing legislation, to improve the program.

**§ 3608. Regulatory approvals; use of public resources**

**1. Regulatory approval.** The development, siting and operation of a community-based renewable energy project is subject to all applicable regulatory reviews and approvals required by governmental entities, including, but not limited to, municipalities and state agencies, pursuant to law, ordinance or rule.

**2. Use of publicly owned land, water or facilities.** Nothing in this chapter limits the authority of the State or a political subdivision of the State to use publicly owned land, water or facilities in the development and operation of a community-based renewable energy project or to lease publicly owned land, water or facilities to other qualifying owners for the development and operation of a community-based renewable energy project.

**§ 3609. Repeal; authority for legislation**

This chapter is repealed December 31, 2015. The joint standing committee of the Legislature having jurisdiction over utilities and energy matters may report out legislation regarding this program to the First Regular Session of the 126th Legislature.

**Sec. A-5. 35-A MRSA §10008, sub-§6, ¶E,** as enacted by PL 2007, c. 317, §15, is amended to read:

E. Nonelectric savings programs must be used to maximize fossil-fueled energy efficiency and conservation and associated greenhouse gas reductions, subject to the apportionment between fossil fuel and electricity conservation set forth in paragraph B. Community-based renewable energy projects, as defined in section 3602, subsection 1, may apply for funding from the trust as nonelectric savings programs.

**Sec. A-6. Community-based renewable energy pilot program; first biennial report; incentives for economically disadvantaged areas.** In the report due January 15, 2011 under the Maine Revised Statutes, Title 35-A, section 3607, the Public Utilities Commission shall provide recommendations regarding policy options, including but not limited to financial incentives, to encourage the development of community-based renewable energy projects in economically disadvantaged areas of the State. For the purposes of this section, “economically disadvantaged areas” includes, but is not limited to, communities, counties and other geographic areas of the State in which



the average weekly wage is below the state average weekly wage or the unemployment rate is greater than the state unemployment rate.

**Sec. A-7. Interim progress report.** No later than February 15, 2010, the Public Utilities Commission shall submit an interim progress report to the Joint Standing Committee on Utilities and Energy regarding the development and implementation of the community-based renewable energy pilot program pursuant to the Maine Revised Statutes, Title 35-A, chapter 36, including, but not limited to:

1. Rulemaking undertaken by the commission pursuant to Title 35-A, section 3606, including, but not limited to, rulemaking to establish prices for long-term contracts for program participants with a generating capacity of less than one megawatt pursuant to Title 35-A, section 3604, subsection 7;
2. The development of contract terms and conditions for long-term contracts under Title 35-A, section 3604; and
3. The number and types of projects that have expressed interest in the program to date, based on inquiries and applications made to the commission.

## PART B

**Sec. B-1. 35-A MRSA §3210, sub-§7,** as amended by PL 2007, c. 403, §5, is further amended to read:

**7. Information.** The commission shall inform electricity consumers in this State of the benefits of electricity generated in this State using renewable resources and of the opportunities available in this State to purchase electricity that is generated using those resources, including, but not limited to, the green power offer and other green power supply products and renewable energy credit products certified under section 3212-A. The commission may not promote any renewable resources over others. The commission may apply for, receive and expend grant money from the United States Department of Energy and other government agencies for this purpose. Notwithstanding section 3211-A, subsection 5, the commission also may use up to \$100,000 per year from the conservation program fund established under section 3211-A, subsection 5 to support the purposes of this subsection. The commission may create or cause to be created a brand or logo to identify Maine renewable resources, including the green power offer and other green power supply products and renewable energy credit products certified under section 3212-A, to consumers. The commission shall register any mark or logo created pursuant to this subsection with the United States Patent and Trademark Office or in accordance with Title 10, chapter 301-A, or both. Any brand or logo created pursuant to this subsection may only be used in accordance with the purposes of this subsection as approved by the commission.

**Sec. B-2. 35-A MRSA §3212-A, sub-§1, ¶A,** as enacted by PL 2007, c. 403, §8, is further amended to read:

A. "Green power supply" means electricity supply or renewable energy credits for electricity generated only from renewable capacity resources as defined in section 3210-C, subsection 1, paragraph E, except that the total power production capacity limit of 100 megawatts under section 3210, subsection 2, paragraph C does not apply to wind power installations or from a generator fueled by landfill gas, including electricity generated by community-based renewable energy projects as defined in section 3602, subsection 1. For the purposes of this section, "green "Green power supply" includes a biomass generator, whose fuel may include, but is not limited to,

anaerobic digestion of agricultural products, byproducts or wastes.

**Sec. B-3. 35-A MRS §3212-A, sub-§1-A** is enacted to read:

**1-A. Green power offer.** The commission shall arrange for a green power offer that is composed of green power supply in accordance with this subsection. Except as provided in this subsection, the commission shall ensure that the green power offer is available to all residential and small commercial electricity customers, as defined by the commission by rule, and shall administer a competitive bid process to select a green power offer provider or providers for the service territory of a transmission and distribution utility.

A. The green power offer must be in addition to existing standard-offer service under section 3212.

B. The commission shall, to the maximum extent possible:

(1) Incorporate green power supply from community-based renewable energy projects, as defined in section 3602, subsection 1, into the green power offer; and

(2) Encourage entities based in this State to provide green power supply from community-based renewable energy projects, as defined in section 3602, subsection 1 for the green power offer pursuant to this subsection.

C. The green power offer may include incidental amounts of electricity supply that do not meet the definition of green power supply, if the commission determines that including such electricity supply is necessary to ensure that a green power offer provider can meet its retail load obligation.

D. The commission shall, in accordance with section 3210, subsection 7, inform residential and small commercial consumers of electricity in this State of the opportunity to purchase the green power offer.

E. The commission is not required to arrange for a green power offer in the event that the commission receives no bids to provide the green power offer in a transmission and distribution utility's territory, determines that the bids it receives are inadequate or unacceptable or determines, based on prior experience arranging for a green power offer in a utility's territory, that it is reasonably likely that it will not receive any adequate or acceptable bids.

F. The commission is not required to arrange for a green power offer for the territory of a consumer-owned transmission and distribution utility. If the commission arranges standard-offer service for a consumer-owned transmission and distribution utility, the consumer-owned transmission and distribution utility may elect to have the commission arrange a green power offer in accordance with this subsection. A consumer-owned transmission and distribution utility may establish a green power offer through a competitive bidding process conducted in accordance with the commission's rules governing the selection of a green power offer provider under this subsection.

The commission shall adopt rules to implement this subsection. Rules adopted under this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**Sec. B-4. 35-A MRS §3212-A, sub-§2,** as enacted by PL 2007, c. 403, §8, is amended to read:

**2. Certification; information in bill inserts.** Beginning July 1, 2008, information regarding the availability of the green power offer and of green power supply products and renewable energy credit products that are certified by the commission may, at the option of the provider of the products offer or the product and with the cooperation of the transmission and distribution utility, be presented through inserts in customer bills issued by transmission and distribution utilities. The costs of the inserts, including but not limited to printing and postage costs, are the responsibility of the provider of the offer or product. The commission may define the criteria for certification of green power supply products and renewable energy credit products by order or by rule, and the commission may limit the criteria for certification for consumer protection and eligibility verification purposes. Rules adopted to implement this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**Sec. B-5. 35-A MRSA §3212-A, sub-§3,** as enacted by PL 2007, c. 403, §8, is amended to read:

**3. Repeal.** This section is repealed ~~July 1, 2010~~ December 31, 2015.

Effective September 12, 2009