STATE OF MAINE
PUBLIC UTILITIES COMMISION

SHARON M. REISHUS
CHAIRMAN

VENDEAN V. VAFIADES
JACK CASHMAN
COMMISSIONERS

February 22, 2010

Honorable Barry Hobbins, Senate Chair
Honorable Jon Hinck, House Chair
Joint Standing Committee on Utilities and Energy
115 State House Station
Augusta, Maine 04333

Re: Interim Progress Report Related To LD 1075, An Act to Establish the Community-based Renewable Energy Pilot Program (Public Law 2009, Chapter 329)

Dear Senator Hobbins and Representative Hinck:

During the 2009 session, the Legislature enacted, L.D. 1075, An Act to Establish the Community-based Renewable Energy Pilot Program (Act). P.L. 2009, ch. 329. Section A-7 requires the Public Utilities Commission (Commission) to submit an interim progress report to the Utilities and Energy Committee (Committee) by February 15, 2010 regarding the development and implementation of the community-based renewable energy pilot program including, but not limited to:

1. Rulemaking undertaken by the commission pursuant to 35-A M.R.S.A. Section 3606, including, but not limited to, rulemaking to establish prices for long-term contracts for program participation with generating capacity of less than one megawatt (MW) pursuant to Section 3604(7);

2. the development of contract terms and conditions for long term contracts under 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.

Commission Rules

The Commission's recently adopted Community–Based Renewable Energy Pilot Program Rule (Chapter 325) and the Order adopting the Rule are attached. Section 6 of the Rule contains the provisions for the long-term contracting incentive under the pilot program. Section 6(C) contains the provisions for periodic solicitations and review of projects of 1 MW or more. Section 6(D) of the Rule contains the provisions for small generators, defined in the Act as projects with a capacity of less than 1 MW, and establishes preset prices for wind power installations, solar arrays and installations, hydroelectric facilities at 10 cents/kWh and states that the Commission will set prices for

other qualifying renewable projects upon request. Finally, Section 7 of the Rule contains the provisions for the renewable energy credit multiplier incentive.

Contract Terms and Conditions for Long-Term Contracts

The Commission is working on a standard contract before issuing a Request for Proposals (RFP) for larger projects.

Number and Types of Projects That Have Expressed an Interest To Date

The Commission has received one filing, to date, for a community wind project under the pilot program. The filing is pending.

If you have any questions regarding this interim update on the pilot program, please do not hesitate to contact us.

Sincerely,

Sharon M. Reishus, Chairman

On behalf of

Vendean V. Vafiades
and
John A. Cashman
Commissioners
Maine Public Utilities Commission

Attachment

cc: Utilities and Energy Committee Members
Lucia Nixon, Legislative Analyst

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2009-363

January 27, 2010

MAINE PUBLIC UTILITIES COMMISSION
Community-Based Renewable Energy
Pilot Program (Chapter 325)

ORDER ADOPTING RULE
AND STATEMENT OF FACTUAL
AND POLICY BASIS

REISHUS, Chairman; VAFIADES and CASHMAN, Commissioners

I. SUMMARY

Through this Order, we adopt rules to implement recently enacted legislation establishing a community-based renewable energy pilot program.

II. BACKGROUND

During the 2009 session, the Legislature enacted An Act To Establish the Community-based Renewable Energy Pilot Program (Act), P.L. 2009, ch. 329. 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.[1] 35-A M.R.S.A. § 3602. In summary, the Act provides incentives, on a pilot program basis, for the development of community-based renewable projects. These projects must be "locally owned electricity generating facilities," which means that 51% or more of the facility must be owned by "qualifying local owners." The facilities must not exceed 10 MW.

Once qualified as a community-based renewable energy project, the facility has the option to elect one of two incentive mechanisms: 1) a long-term contract for the output of the facility with a transmission and distribution (T&D) utility; 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 Commission is also authorized to incorporate energy from community-based renewable energy projects into standard offer supply.

[1] Part B of the Act requires the Commission to arrange for a green power offer that is composed of green power supply. The Commission is considering implementation issues associated with the green power offer through a separate process.

The program is limited to a total installed generating capacity of 50 MW, with capacity limits for the individual T&D service territories.[2] The program runs through the end of 2015 and there are a variety of requirements for Commission reports to the Legislature.

To obtain information, viewpoints and recommendations from interested persons on a variety of issues raised by the Act, the Commission, on July 14, 2009, opened an Inquiry. *Inquiry into the Implementation of the Community-Based Renewable Energy Pilot Program,* Docket No. 2009-213 (July 14, 2009). The Notice of Inquiry (NOI) requested interested persons to respond to a number of questions and issues on the various provisions of the Act. The following interested persons filed comments in response to the NOI: Central Maine Power Company (CMP), Bangor Hydro-Electric Company (BHE), Maine Public Service Company (MPS), Ed Holt and Associates, Chris Anthony and Sam Saltonstall. Based on consideration of the comments and other information, we developed a proposed rule.[3]

III. RULEMAKING PROCESS

On November 3, 2009, we issued a Notice of Rulemaking (NOR) and proposed rule that would implement recently enacted legislation establishing a community-based renewable energy pilot program. Consistent with rulemaking procedures, the Commission provided interested persons with the opportunity to provide written and oral comments on the proposed rule. Central Maine Power Company (CMP), Bangor hydro-Electric Company (BHE), Maine Rural Partners (MRP), Mike Booth, Peregrine Technologies (Peregrine), Sevee & Mahar Engineers, Inc. (Sevee & Mahar) and Representative David Van Wie commented on the proposed rule.[4]

IV. RULE PROVISIONS

A. Purpose (Section 1)

As stated in the adopted rule, the purpose of the rule is to implement the State's policy to encourage the sustainable development of community-based renewable energy in Maine through the establishment of a pilot program. No one commented on this provision and it is unchanged from the proposed rule.

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[2] Participation in the long-term contracting aspect of the program for consumer-owned utilities (COUs) is voluntary.

[3] All comments filed in the inquiry can be obtained from the Commission's virtual case file on its webpage, www.maine.gov/mpuc, through reference to Docket No. 2009-213.

[4] All comments filed in the rulemaking can be obtained from the Commission's virtual case file on its webpage, www.maine.gov/mpuc, through reference to Docket No. 2009-363.

B. Definitions (Section 2)

Section 2 of the adopted rule contains definitions of terms used throughout the rule. Most of the defined terms are contained within the definitions section of the Act. The adopted rule adds several definitions. All the definitions in the adopted rule are self-explanatory.

The only change from the proposed rule is a modification of the definition of "installed generating capacity." The definition is the nameplate capacity of a project that is either under a utility T&D contract or obtaining a REC multiplier. The term is used to determine whether the various capacity limits are reached. The proposed rule referenced only long-term contracts. For consistency, the adopted rule also references the REC multiplier (see discussion in section IV(C), below.

C. Pilot Program Capacity Limits (Section 3)

As mentioned above, the Act contains total capacity limits, and capacity limits within individual T&D utility service territories. Section 3 of the adopted rule contains the pilot program capacity limits. As specified in the Act, section 3(A) contains the total installed capacity limit of 50 MW. Also as specified in the Act, section 3(B) contains a capacity limit of 10 MW for each individual qualifying project. Section 3(C) contains the Act's requirement that the total installed generating capacity of participants within the service territory of a single investor-owned T&D utility may not exceed 25 MW, unless a higher installed capacity limit is authorized by the utility and approved by the Commission.

The Act states that the Commission shall determine the generating capacity limit for the individual utility service territory at the outset of the program, "taking into consideration the utility's electric load and share of electricity market in the State." The Act also specifies that 10 MW of the total 50 MW limit be reserved at the outset of the program for generating capacity of less than 100 kW or qualified generation in the service territory of consumer-owned T&D utilities (COUs). Section 3(D) of the adopted rules sets the initial capacity limits as follows: CMP 25 MW; BHE 11 MW; and MPS 4 MW. These capacity limits were established by first allocating 40 MW (50 MW total program limit minus the 10 MW reserved for COUs and facilities below 100 kW) of available capacity among the investor-owned utility service territories by the relative size of each utility's peak load. This would result in the following capacity limits: CMP 32, BHE 6, and MPS 2. However, this would result in a capacity limit that is above the 25 MW service territory cap for CMP by 7 MW. When the 7 MW is allocated to BHE and MPS based on relative peak, the capacity limits in the adopted rule results. The proposed rule stated that facilities less than 100 kW do not count towards the cap, because the Act reserves 10 MW to these facilities (and facilities in COU service territories). CMP argued that that the exclusion of facilities less than 100 kW from counting towards its territory's 25 MW cap would violate the Act's stated limit of 25 MW in a single utility territory. MRP concurred with CMP's position. We agree and have removed the exclusion for small facilities.

Section 3(E) of the adopted rule contains the Act's requirement that, unless the Commission determines otherwise based on program experience, the total capacity limit of projects that are either within COU service territories or less than 100 kW is 10 MW. No one commented on this provision and it is unchanged from the proposed rule.

Section 3(F) contains the statutory requirement that the total generating capacity of projects receiving the REC multiplier incentive not exceed 10 MW. No one commented on this provision and it is unchanged from the proposed rule.

Finally, the term "installed generating capacity" is used throughout the section. The term is defined in section 2 of the adopted rule as the nameplate capacity of a project that under contract with a T&D utility under the long-term contract incentive provisions, section 6 of the rule, or is obtaining a REC multiplier incentive under section 7 of the rule. The adopted rule anticipates that projects could be certified by the Commission as community-based renewable energy projects and enter into contracts with utilities prior to construction and operation, thus counting towards the capacity limit. This approach in which projects may be certified and enter into contracts with utilities prior to construction should aid in the financing of the projects. However, if project construction is seriously delayed or does not occur, the project will contribute to the capacity limit in section 3 of the rule, possibly preventing other viable projects from participating in the pilot program. Accordingly, the adopted rule (section 6(G)) contains a provision that utility contracts will terminate if the project is not in-service within three years of the execution of the contract or if the project ceases operation for a six-month period after the initial service date. Similarly, a project that obtains the REC multiplier may shut down for extended period. To prevent such a project from contributing to the capacity limit, section 7(B) of the adopted rule provides that a project that chooses the REC multiplier incentive and ceases operation for a six-month period will not count towards the capacity limit.

D. Pilot Program Eligibility (Section 4)

Section 4 of the adopted rule contains the program eligibility requirements. Section 4(A) includes the eligibility criteria as required in the Act. These are that projects: are "community-based" as defined in the Act; have local support; are connected to the grid, and have an in-service date after September 1, 2009.

With respect to the "local support" provision," the proposed rule contained the statutory language that there must be a resolution of support for the project by the "municipal legislative body or municipal officers..." MRP expressed concern that, without clarification, the language could be interpreted as allowing the required support through the action of municipal officers that do not represent an official pronouncement of the legislative body. Rep. Van Wie agreed with MRP's concerns. We also agree and have modified the language to clarify that the local support must be an official pronouncement of the municipality.

Section 4(B) contains the process for Commission certification as a community-based renewable energy project, including the information that must be included in a petition for certification. Among the required information is a statement of the program incentive that the project anticipates choosing. However, as specified in section 5 of the adopted rule, this statement is not binding on the project. This provision of the adopted rule also states that the Commission must make a finding that a proposed project is reasonably likely to be operational and in-service within three years of certification. There would appear to be no purpose to certifying a project that is not reasonable likely to be operational in the relatively near future. Finally, the adopted rule states that Commission certification terminates if the project is not in-service within three years of certification. This provision will help prevent projects that are not likely to be realized to take up room under the various pilot program capacity limits. A program participant whose certificate has terminated may reapply for certification.

E. Pilot Program Incentives (Section 5)

Section 5 of the adopted rule contains the program incentives for eligible projects. As specified in the Act, these are a long-term contract with a T&D utility or a REC multiplier. The section specifies that a program participant may not change its choice of incentive while under contract with a utility and may not participate in two program incentives at the same time.

F. Long-Term Contracting (Section 6)

Section 6 of the adopted rule contains the provisions governing long-term contracting, one of the two program incentives authorized in the Act.

1. Contracting Authority (Section 6(A))

Section 6(A) specifies the Commission's authority to direct investor-owned T&D utilities to enter into long-term contracts with program participants for energy, capacity resources or RECs. The section specifies that the contract may be for physical delivery or may be a financial transaction.[5] No one commented on this section and it is unchanged from the proposed rule.

2. Participant Option (Section 6(B))

This section of the adopted rule states that it is the participant's option as to whether it will sell capacity or RECs, along with the energy, to the utility.

[5] Financial transactions are agreements in which money (rather than a physical delivery of the capacity and energy commodity) is exchanged among the contracting parties. Such transactions mirror the financial consequences of a physical transaction, but can do so in a way that reduces transaction costs and risks for the contracting parties.

The provision states that all or a specified percentage of the output of the facility has to be sold to the utility under the long-term contract. We assume that the underlying intent of the Act and its major benefit is to allow for the sale of energy to utilities under long-term contracts. However, the Act does not appear to require participants to sell capacity and RECs and doing so may be impractical for small facilities.

MRP, Rep. Van Wie and Peregrine commented that the rule should contain provisions that would allow for utilities to obtain the value of capacity or RECs for ratepayers through some type of aggregation process (if possible and practical) when the program participant is not otherwise obtaining any value. We agree and have added language to the adopted rules that would allow for aggregation of otherwise unused RECs or capacity if it can be done so in a way that would add value for the benefit of ratepayers

3. Large Generators (Section 6(C))

Section 6(C) has the provisions for contracting with large generators, defined in the Act as projects with capacity of one megawatt or more. Section 6(C)(1) requires the Commission to conduct periodic competitive solicitations for community-energy renewable projects. Depending on the number of certified projects without a contract or REC multiplier, the Commission anticipates conducting a solicitation once or twice a year. Because there would be no eligible bidders, the rule specifies that the Commission will not conduct solicitations if there are no certified projects of one or more megawatts that do not already have long-term contracts or are not already participating in the REC multiplier program incentive. Rep. Van Wie commented that the proposed rule's language on this point was unclear. We have attempted to clarify the language in the adopted rule.

Section 6(C)(2) specifies that the Commission will solicit bids through the issuance of a request for proposals (RFP) that contains a standard form contract.[6] The RFP will require proposals to include full cost disclosure and expected revenue from products not sold to the utility (e.g., RECs) to ensure that the bid price is not above project costs as required by the Act and that the project does not over-recover its costs. The adopted rule delegates the authority to develop, approve and modify the RFPs and standard contract to the Commission's Director of the Electric and Gas Division.

Section 6(C)(3) contains provisions on proposal evaluation and bidder negotiations. The section specifies that the Commission review proposals to ensure compliance with the RFP and that the Commission may engage in negotiations or discussions with bidders to clarify, refine or improve the proposals. The section also requires the applicable T&D utility to participate in the proposal evaluation and bidder negotiations, at the direction of the Commission. No one commented on this section and it is unchanged from the proposed rule.

[6] The Commission anticipates issuing a standard contract for public comment.

Section 6(C)(4) contains selection criteria and states that the Commission will select proposals that are certified, satisfy the requirements of the RFP and meet the rule's cost containment requirements of the Act (price of the contract does not exceed 10 cents/kWh and the cost of the project). If the bidder proposes not to sell all the applicable products (capacity or RECs) to the utility, the Commission will consider expected revenue from the products not sold to the utility to ensure that the project does not over recover its costs. In the event the total capacity of qualifying proposals exceeds the applicable pilot program capacity limits, the proposed rule states that the Commission will select the proposals that provide the "greatest value." CMP commented that the use of the term "value" is unclear and stated its assumption that the intent is to choose proposals based on the lowest net cost to ratepayers. We agree and have modified the language in the adopted rule.

4. Small Generators (Section 6(D))

Section 6(D) contains the provisions for small generators, defined in the Act as projects with a capacity of less than 1 MW. As required by the Act, the rule contains preset prices for wind power installations and solar arrays and installations, and states that the Commission will set prices for other qualifying renewable projects upon request. The adopted rule adds a preset price for hydroelectric facilities and allows for changes of the preset prices through Commission order.

a. Pre-Established Prices

The adopted rule (section 6(D)(1) sets the pre-determined prices at the Act's cost containment cap of 10 cents/kWh for both wind and solar installations. This results from a Commission review that indicates that the cost of small wind and solar installations are not likely to be below the cost containment cap. Most significantly, Vermont has recently enacted legislation similar to the Maine Act in that it requires long-term contracts for small renewable projects (2.2 MW or less) priced at project costs.[7] The Vermont legislation requires the Vermont Public Service Board (Vt PSB) to establish the cost-based prices for the different renewable technologies. To accomplish this task, the Vt PSB established a Cost Analysis Subgroup (Subgroup) to establish a model to estimate the costs and returns to developers. The model contained cost and revenue assumptions for each renewable technology including installed capital costs, cost of capital and capital structure, interconnection costs, revenues from the sale of RECs, grant availability, taxes and tax benefits.[8]

The Subgroup modeling resulted in cost-based prices that ranged from 11.1 cents/kWh to 12.6 cents/kWh for 1.5 MW wind projects; 17.1

[7] Vermont Energy Act of 2009, Public Act 25, codified in 30 V.S.A. § 8005.

[8] The "Report and Recommendations of the Cost Analysis can be found at http://psb.vermont.gov/sites/psb/files/docket/7523/CostAnalysis/Cost_Analysis_Subgroup_Final_Report.pdf.

cents/kWh to 26.9 cents/kWh for 100 kW wind projects; and over 25 cents/kWh for solar installations with the price dramatically increasing for smaller solar installations (i.e., 36.8 cents/kWh to 55.7 cents for 15 kW solar PVs). Using the Subgroup results, the Vt PSB established the following prices for long term contracts of 20 years for wind projects and 25 years for solar installations: 20 cents/kWh for wind projects of 15 kW or less; 12.5 cents/kWh for wind projects over 15 kWh; and 30 cents/kWh for solar installations.[9]

Based on the results of the comprehensive work in Vermont, a northern New England state with climate similar to Maine, as well as other information,[10] we conclude that, for purposes of initiating the pilot program, it would not be necessary or useful for us to undertake time-consuming and expensive analyses and modeling similar to that recently completed in Vermont. At this point, we are reasonably confident that cost-based contract prices for small wind and solar installations below 1 megawatt would not show a price below the 10 cents/kWh statutory cap. We will re-examine this conclusion in the future as new information is developed.[11]

CMP commented that the Commission's reliance on the work in Vermont and other sources to set the prices for small generators at the statutory cap of 10 cents/kWh is inconsistent with the intent of the Act that, accordingly to CMP, requires the Commission to conduct its own cost analysis of each project. MRP and Rep. Van Wie disagree with CMP, commenting that setting the price at 10 cents/kWh based on a review of the comprehensive work done in Vermont and elsewhere is appropriate in this case and avoids an unnecessary devotion of resources. We disagree with CMP's view of the requirements of the Act and maintain the 10 cents/kWh price for small generators as stated in proposed rule. The Act does not explicitly require an independent cost analysis by the Commission and, as discussed above, we find such an analysis at this time would be time consuming and a waste of resources. The Act establishes a pilot program for the purposes of gathering information on incentives for the development of community-based renewable energy projects and the rule will provide information on the cost of small projects based on the number of projects that opt for a contract at 10 cents/ kWh. An independent cost analysis would also seriously delay the implementation of the pilot program from 6 months to a year. Moreover, a process whereby the Commission performs a cost analysis on individual projects is inconsistent with the intent of the Act to have readily available preset contract prices.

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[9] *Order Re Initial Standard Offer Price*, Docket No. 7523 (Vt PSB, Sept. 15, 2009).

[10] For example, solar electricity prices tracked at solarbuzz.com reports energy costs for a 2 kW residential system, a 50 kW commercial system, and a 500 kW industrial system all substantially above 10 cents.

[11] For example, if numerous projects enter into contracts at the 10 cent rate, it could indicate that the price is set too high.

b. Small Hydroelectric

Rep. Van Wie suggested that the Commission consider adding small hydro or micro hydro to the small generator provisions and, if supported by the work in Vermont, require that they would be eligible for contracts at the 10 cents per kWh price. We have reviewed the work conducted in Vermont and conclude that it is reasonably likely that cost-based prices for small hydroelectric facilities (under 1 MW) would not be below the 10 cents/kWh statutory cap.[12] Accordingly, we have included small hydroelectric facilities in the adopted rule with a preset price of 10 cents/kWh.

c. Contract Price Variation

The proposed rule stated that, at the option of the program participant, the contract price could vary over a year, but that the average price, weighted on the expected output of the facility, may not exceed 10 cents kWh in any year. CMP expressed concern over this provision, noting that the provision contained no guidance on how it would work in practice. For example, CMP asks who will determine how prices vary and whether the variation is unlimited so that customer could require payment of 19 cents per kWh for the first 6 months and 1 cent per kWh for the last 6 months of a year. CMP also questions how billing adjustments would be made to ensure that the 10 cent average is not exceeded. We agree with CMP that this provision is problematic and so the adopted rule states that the price will be a fixed 10 cents/kWh, unless the Commission determines otherwise by order.[13] For purposes of a pilot program and taking into account that the process for small generators is intended to be streamlined, we view this restriction as reasonable. If experience shows a need for prices to vary, we will consider such a modification through a Commission process.

CMP points out that the small generator provision contemplates a standard contract, but does not indicate who will develop the contract. CMP notes that the large generator provision specifies that the Commission will develop the standard contract and delegates that authority to the Director of Electric and Gas Utility Industries. This discrepancy was an oversight and we have, therefore, added language to the small generator provision specifying that it is the Commission's responsibility to develop the standard contract.

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[12] The Vermont Cost Analysis Subgroup found that the cost of a 1.3 MW hydroelectric facility would be in the range of 13 to 15 cents/kWh over a 20 to 30 year term. In its September 15, 2009 Order, the Vt. PSB established a price for long-term contracts hydroelectric facilities to be 12.5 cents/kWh.

[13] Large generators will be allowed to propose varying prices and the Commission will address concerns such as those raised by CMP during the proposal review process.

d. Sale of RECS and Capacity

Finally, for the following reasons, the adopted rule does not require small generators to sell capacity or RECs to the utility. First, the administrative burden and cost are likely to be a barrier for smaller facilities to obtain capacity value and RECs associated with the facility.[14] Second, the additional revenue from the separate sale of RECs or capacity if practical could make a smaller project economically viable. Thus, the approach in the adopted rule promotes the goals of the Act, while limiting utility payments to 10 cents/kWh. However, as specified in section 6(B), the adopted rules allow for aggregation of otherwise unused RECs or capacity if it can be done so in a way that would add value for the benefit of ratepayers.

5. Cost Containment (Section 6(E))

Section 6(E) contains the cost containment provisions required by the Act. As discussed above, these are that contract prices may not exceed 10 cents/kWh or the cost of the project, including a reasonable rate of return on investment, as determined by the Commission. The provision is unchanged from that in the proposed rule.

MRP questioned at what point in the process would the Commission set a reasonable rate of return. For small generator projects, rates of return were included in the modeling during the Vermont process and, therefore, the Commission need not set a return for those projects. For large generator projects, it would be difficult to set a rate of return in advance without knowledge of ownership structure and financing arrangements for particular projects. Accordingly, we will determine appropriate rates of return when we consider individual projects costs during the request for proposals process under section 6(C) of the rule.

6. Contract Term (Section 6(F))

Section 6(F) of the adopted rule states that the term of the contracts will be 20 years, unless the program participant chooses a shorter term. CMP expressed concern regarding this provision in that the Act establishes a maximum term of twenty years and longer term contracts may violate the cost containment provisions that the contract will not exceed project costs. As discussed in section 4(F)(4) above, a 10 cent/kWh preset price for small generators is not reasonably likely to be above costs over a 20 year period. For large generators, we will ensure, during the contract review process that the cost containment provisions are not violated by a contract term that results in more revenue than the project costs. However, to clarify this point, we have added language stating that a contract term will not violate the cost containment provisions of the rule.

[14] Our understanding is that facilities below 100 KW cannot participate in the ISO-NE capacity market.

7. Contract Termination (Section 6(G))

Section 6(G) specifies that contracts will terminate if the project is not in-service within three years of the execution of the contract or if the project ceases operation for a six-month period after the initial service date. As mentioned above, this provision will prevent projects that are not operating from counting towards the pilot program capacity limits.

8. Contract Administration (Section 6(H))

Section 6(H) specifies that the T&D utility is responsible for administering the long-term contracts. No one commented on this provision and it is unchanged from the proposed rule.

9. Contract Payments (Section 6(I))

As required by the Act, section 6(I) specifies that payments under the contracts must occur after contracted for capacity and energy is provided. No one commented on this provision and it is unchanged from the proposed rule.

10. Commercial Reasonableness (Section 6(J))

Section 6(J) requires contracts to be commercially reasonable, as required by the Act. No one commented on this provision and it is unchanged from the proposed rule.

11. Interconnection Requirements (Section 6(K))

Section 6(K) specifies that participants in the program must comply with all utility interconnection rules and standards. The proposed rule was silent on this point. BHE commented that there may be confusion regarding the applicability of interconnection rules and requirements. The adopted rule clarifies that program participants must comply with the interconnection rules.[15]

12. Disposition of Resources (Section 6(L))

Section 6(L) of the adopted rule contains the provisions governing utility disposition of contracted for resources. The section states that, at the direction of the Commission, utilities will sell the resources into the market, use the resources to supply load requirements of Maine's ratepayers, or take other action as determined by the Commission. No one commented on this provision and it is unchanged from the proposed rule.

[15] Our net energy billing rule has a similar provision, Chapter 313, § 3(H).

13. Cost Recovery (Section 6(M))

Section 6(M) of the adopted rule contains the utility cost recovery provisions. As required by the Act, the adopted rule allows for the recovery of the costs of the contracts (in the event contract prices are above market prices), and also allows for the recovery of contract administration costs. No one commented on this provision and it is unchanged from the proposed rule.

14. Commission Notification (Section 6(N))

Section 6(N) of the adopted rule requires participants to notify the Commission of the facility's in-service date, and if the facility subsequently ceases operation or substantially reduces operation for a six-month period. This reporting requirement will allow the Commission to monitor the long-term contract incentive and assure that pilot program capacity limit space is not taken by facilities that are not operating or have substantially reduced capacity. No one commented on this provision and it is unchanged from the proposed rule.

15. Consumer-Owned T&D Utilities (Section 6(O))

As specified in the Act, section 6(O) of the adopted rule states that COUs have the option, but are not required, to enter into long-term contracts pursuant to the rule. No one commented on this provision and it is unchanged from the proposed rule.

G. Renewable Energy Credit Multiplier (Section 7)

Section 7 of the adopted rule contains provisions on the REC multiplier, the second of the two program incentives authorized in the Act. Section 7(A) states that, for purposes of Maine's portfolio requirements, the value of a REC for a facility located in the ISO-NE area is 150% of the amount of the associated energy. Because northern Maine does not have a REC system, the adopted rule specifies that the value of the energy generated from a project located in northern Maine, for purposes of the Maine's portfolio requirements, is 150% of amount of generated electricity.[16] Section 7(B) requires a program participant located in the ISO-NE area to notify the Commission that the participant has elected the REC multiplier option and has made arrangements to obtain RECs from the NEPOOL GIS. The participant is also required to notify the Commission of the facility's in-service date, and if the facility subsequently ceases operation or substantially reduces operation for a six-month period. This reporting requirement will allow the Commission to monitor the REC multiplier incentive and assure that capacity limit space is not be taken by facilities that are not operating or have substantially reduced capacity.

[16] The Commission will amend its portfolio requirement rule to incorporate the 150% REC multiplier.

Sevee & Mahar commented that it is unclear whether net energy billing customers could take advantage of the REC multiplier. Under our net energy billing rules (Chapter 313), the customers retain the rights to the associated RECs and can therefore qualify for the REC multiplier.

H. Waiver or Exemption (Section 8)

Section 8 of the proposed contains the Commission's standard waiver provision. No one commented on this provision and it is unchanged from the proposed rule.

I. Repeal (Section 9)

The Act states that the community-based renewable energy pilot program is repealed on December 31, 2015, but also authorizes the Utilities and Energy Committee to report out legislation regarding the program during the following legislative session. Accordingly, the adopted rule contains a provision that states the rule is repealed on December 31, 2015, unless the Legislature extends the community-based renewable energy pilot program. No one commented on this provision and it is unchanged from the proposed rule.

Accordingly, we

ORDER

1. That Chapter 325, Community-Based Renewable Energy Pilot Program, is hereby finally adopted;

2. That the Administrative Director shall file the adopted rule and related materials with the Secretary of State;

3. That the Administrative Director shall notify the following of the adoption of the final rules:

a. all transmission and distribution utilities in the State;

b. all licensed competitive electricity providers

c. all person who filed comments in the Inquiry, *Inquiry into the Implementation of the Community-Based Renewable Energy Pilot Program,* Docket No. 2009-213;

c. all persons who have commented in this rulemaking, Docket No. 2009-363; and

d. all persons who have filed with the Commission within the past year a written request for notice of rulemakings;

4. That the Administrative Director shall send copies of this Order and the attached final rules to the Executive Director of the Legislative Council, 115 State House Station, Augusta, Maine 04333-0115 (20 copies).

Dated at Hallowell, Maine, this 27th day of January, 2010.

BY ORDER OF THE COMMISSION

Karen Geraghty
Administrative Director

COMMISSIONERS VOTING FOR: Reishus
Vafiades
Cashman

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 21 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.