

STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

In re: Electric Renewable Portfolio Standard, RSA 362-F: 4, VI) Docket No. DE 13-021
Adjustments to Class III Renewable Portfolio Requirements)

**COMMENTS OF
BRIDGEWATER POWER COMPANY, L.P., PINETREE POWER, INC., PINETREE
POWER-TAMWORTH, INC., SPRINGFIELD POWER LLC, WHITEFIELD POWER &
LIGHT COMPANY, AND INDECK ENERGY -- ALEXANDRIA, LLC**

On January 18, 2013 the Commission issued an order of notice followed by a supplemental order of notice on January 31, 2013 commencing this docket pertaining to the renewable portfolio standard law, RSA 362-F, (“RPS”) Class III requirements. In those orders the commission indicated the docket would address whether, and how, to adjust the Class III purchase percentage requirements pursuant to RSA 362-F: 4, VI, and if so, for what calendar years. RSA 362-F: 4, VI provides for the adjustment of the Class III demand for renewable energy certificates (“RECs”) set by RSA 362-F: 3. The supplemental order of notice scheduled a public comment hearing, which occurred on February 14, 2013.

At the public comment hearing the Commission invited participants to submit written comments on the issues raised by the docket no later than February 21, 2013. Bridgewater Power Company, L.P., Pinetree Power, Inc., Pinetree Power-Tamworth, Inc., Springfield Power LLC, Whitefield Power & Light Company, and Indeck Energy -- Alexandria, LLC (collectively, the “Wood-Fired Power Plants”) submit the following comments:

1. The Commission, on its own motion, should consider staying this docket because SB 148, which is pending in the Senate, and this docket address the common issue of adjustment of class III purchases percentages. Section I of that bill, as introduced, reduces the class III purchase percentage for 2013 from 6.5% to 5.5% and for 2014 from 7% to 5.5%. Further

reductions in the 2013 and 2014 class III percentages could occur as the bill proceeds in the legislative process. Additionally, section 3 of the bill, in effect, makes an after the fact adjustment to the purchase percentage for compliance year 2012. Section 3 provides that payments into the alternative compliance fund created in RSA 362-F: 10, I for compliance year 2012 in excess of six million dollars (exclusive of class II monies) be rebated. SB 148 proposes these changes in the class III RPS in recognition of the level of funds paid into the alternative compliance fund for compliance year 2011. Given that this docket and SB 148 address common issues, the Commission should consider staying the docket and directing its staff to work in the legislative process to revise the class III purchase percentage for 2013 and 2014. Such action by the Commission will serve the interests of efficiency and avoidance of potentially inconsistent results.

2. If the Commission elects to continue the docket while the legislature addresses SB 148, then the Commission should seek to address class III percentage adjustments only in the 2013 and 2014 years and not beyond. These are the years addressed in SB 148 and the present renewable market alternative compliance payment (“ACP”) rates are such that reasonable assumptions can be made regarding the potential supply of class III RECs in those years.

3. The potential for biomass generation REC supply into class III can be assessed by reviewing the Commission’s October 2012 list of eligible facilities as posted on the Commission’s website. This list indicates that class III REC supply (subject to post-October 2012 additions) can only be produced from approximately 122 MWs of class III eligible facilities. Approximately 81 MWs of these facilities are landfill gas-fueled generation facilities. The remaining approximately 41 MWs are assigned to two of the Wood-Fired Power Plants; Pinetree Power, Inc. (“PPI”) and Pinetree Power-Tamworth, Inc. (“PPTI”). A third wood-fired

power plant, Springfield Power Company, LLC, was class III qualified but, as indicated in the October 2012 list, is not so at present. PPI and PPTI, while class III eligible, are also eligible facilities in the Connecticut Class I renewable portfolio program (“Conn. RPS”). The other four Wood-Fired Power Plants are Conn RPS eligible facilities.

The ACP in the Conn. RPS is set by statute at a non-escalating or fixed rate of \$55 each year, including the years 2013 and 2014. In comparison, the class III ACP rate for 2013 is \$31.50 as calculated by the Commission. Assuming a 1% escalation, for the sake of comparison, the 2014 class III ACP would be \$31.82, while the Conn. RPS ACP remains at \$55 in that year. Given these ACP differences and assuming adequate demand in the Conn. RPS, it is reasonable to expect the eligible class III wood-fired potential REC supply and any potentially eligible class III wood-fired plant (*e.g.*, Springfield Power Company, LLC) would first seek REC sales in the Conn. RPS or any other higher ACP rate market for which they may qualify (*e.g.*, Indeck-Alexandria is class I New Hampshire qualified and could be class III qualified during these years). It is reasonable to assume that these facilities are not likely to produce significant, if any, class III REC sales in the 2013-2014 timeframe.

No class III landfill gas-fueled generation facility representatives spoke at the public comment hearing. Whether these class III facilities, which have no direct fuel cost and hence lower operating costs, would at some point during these years seek to make sales into the class III RPS cannot be determined from the hearing. Public Service Company, Liberty Utilities and the New Hampshire Electric Cooperative indicated present difficulty in obtaining class III RECs, which would include those produced from landfill gas. This may be the case because landfill gas generation is an eligible technology in the Conn RPS and, if commercially operational after December 31, 1997, is also eligible in the Massachusetts class I renewable portfolio law

program. With an ACP of \$55 in the Conn RPS and a 2013 ACP in Massachusetts of \$65.27 one would expect that such generation units would obtain eligibility in multiple renewable portfolio programs. In fact a brief partial review of the lists of eligible facilities maintained on the New Hampshire, Conn RPS and Massachusetts renewable portfolio websites (<http://www.ct.gov/pura/cwp/view.asp?a=3354&q=415186> and <http://www.mass.gov/eea/energy-utilities-clean-tech/renewable-energy/rps-aps/qualified-generation-units.html>) indicates landfill generation units have obtained multiple eligibility determinations. *E.g.*, Johnston, Rhode Island Landfill Gas (NH, Conn., Mass.); Suncook Energy Nashua Landfill (NH, Conn.); Seneca Ontario, New York (NH, Conn., Mass.) and Model City, New York (NH, Conn., Mass.). The Commission could make reasonable assumptions regarding the availability of these units to the class III market during these years, taking into account the multiple eligibility determinations and the ACP differentials. In making such assumptions the Commission should consider some factor for the fact that landfill gas units with multiple eligibility may not universally sell into the higher ACP market at any particular time. For example, a unit may sell its RECs under contract for some term into a market that later in the contract term prices RECs less than what it could obtain in another market at that later date. Furthermore, in making assumptions for the 2013-2014 timeframe, one must also consider the potential class III supply changes that could be made by SB 148. At the public comment hearing, the Wheelabrator representative indicated that one amendment to SB 148 would seek to add waste-to-energy facilities less than 6 MWs in capacity to class III and exclude landfill gas generation whose total capacity on the landfill site exceeds 10 MWs from class III. The amendment referenced by the Wheelabrator representative was introduced at the SB 148 February 20, 2013 public hearing by Senator Pierce.

The amendment proposes to add 6 MW or less gross capacity waste-to-energy plants that are connected to an electric distribution system located in New Hampshire to class III effective with bill passage. It also proposes to exclude landfill gas generation as described above from class III supply effective January 1, 2015. This amendment as it pertains to waste-to energy, and other potential changes to SB 148 as it moves through the legislative process, if enacted into law, will affect the class III REC supply. (The fact that the Legislature may make class III eligibility additions and affect potential REC supply is a further reason for the Commission to stay the docket in favor of making class III purchase percentage adjustments in the SB 148 legislative process.)

4. For the following reasons, the Commission should not make any adjustments in the purchase percentages for class III for 2015 or beyond at this time. First, SB 148 does not propose adjustments to years beyond 2014. As noted above, the Commission should consider deferring action in this docket to the SB 148 legislative process, or if the Commission elects to proceed, then consider making adjustments in the same timeframe as sought by SB 148. Second, SB 218, which made revisions to the RPS, became law last session after the Senate and House each engaged in significant committee work and then reconciled the differing version passed by each legislative body in a committee of conference. Among other RPS revisions, SB 218 revised the class III purchase percentages for 2015 and beyond. See Chapter 272 (2012). The Commission should consider deferring to this very recent legislative action. Third, as a number of commentators stated at the public comment hearing, SB 148 proposes to adjust the class III ACP upward in 2015. This ACP adjustment may result in increased supply availability in class III.

WHEREFORE, the Wood-Fired Plants respectfully request that the Commission consider staying this docket and directing its staff to work in the SB 148 legislative process to adjust class III percentages for the years 2013 and 2014, or if it determines to proceed, then only make adjustment to the 2013 and 2014 class III percentages.

Respectfully submitted,
BRIDGEWATER POWER COMPANY, L.P.,
PINETREE POWER, INC.,
PINETREE POWER-TAMWORTH, INC.,
SPRINGFIELD POWER LLC,
WHITEFIELD POWER & LIGHT COMPANY and
INDECK ENERGY – ALEXANDRIA, LLC

By Their Attorney,

R. OLSON LAW OFFICE, PLLC.

Dated: 2-21-13

By:



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CERTIFICATE OF SERVICE

I hereby certify that, on this date, I caused a copy of the foregoing Comments to be filed in hand and electronically with the Commission and electronically, or by U.S. Mail, first class to the Service List in DE 13-021.

Date: 2-21-13



Robert A. Olson, Esq.