

STATE OF NEW HAMPSHIRE

Inter-Department Communication

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FROM: Stephen R. Eckberg, Analyst, Sustainable Energy Division SRE

SUBJECT: DM 18-075, EDF Energy Services, LLC
Staff Recommendation regarding transfer of Class I non-thermal banked RECs from TransCanada Power Marketing Ltd. for 2018 RPS compliance

TO: Martin P. Honigberg, Chairman
Kathryn M. Bailey, Commissioner
Michael S. Giaimo, Commissioner
Debra A. Howland, Executive Director

CC: Karen Cramton, Director, Sustainable Energy Division ^{KCC}
Mary Schwarzer, Staff Attorney

I. SUMMARY

EDF Energy Services, LLC (EDF) and TransCanada Power Marketing Ltd. (TransCanada) are competitive electric power suppliers (CEPS). On May 29, 2019, EDF and TransCanada filed a joint motion requesting a waiver of Puc 2503.05, “and any other applicable rules to the extent necessary,” to permit the transfer to EDF of TransCanada’s banked Class I non-thermal renewable energy certificates (RECs). EDF proposes to use the transferred vintage 2016 RECs to meet its Renewable Portfolio Standard (RPS) compliance requirements.

Staff recommends that the Commission grant the rules waivers necessary to permit the transfer of 5,287 of TransCanada’s banked Class I non-thermal vintage 2016 RECs to EDF for use in meeting its 2018 RPS compliance requirements. Staff believes that waiver of N.H. Code Admin. Rules Puc 2503.05(c)(2), 2504.01(c), and 2504.02(c) is required to recognize the transfer of banked RECs outside of the New England Power Pool Generation Information System (NEPOOL-GIS) system. Staff recommends that the Commission find that the waivers are appropriate because they would serve the public interest and would not disrupt the orderly and efficient resolution of matters before the Commission, and because the purpose of the rules would be satisfied by the alternative proposed method.

II. BACKGROUND

In 2016, TransCanada purchased more New Hampshire Class I non-thermal RECs than it ultimately needed for compliance purposes. Accordingly, it banked those RECs for use in either 2017 or 2018, pursuant to RSA 362-F:7 and Puc 2503.05. After meeting compliance requirements for 2017, TransCanada had 12,627 vintage 2016 Class I non-thermal banked RECs for use in 2018.

On March 1, 2018, TransCanada divested its retail power marketing business to EDF. *See TransCanada Power Marketing Ltd.*, DM 16-705 (May 1, 2019 Secretarial Letter). All existing TransCanada customers were provided notice of their options to have their retail contracts assigned to EDF at the same price and terms, or to remain with TransCanada until their current contract terms expired. As of the date each TransCanada customer transitioned to EDF, EDF became responsible for

that customer's load, thereby increasing its own 2018 RPS compliance requirements. By the end of December 2018, all TransCanada customers had transitioned to EDF or their contract terms had expired. On May 1, 2019, the Commission deemed TransCanada's CEPS registration to be withdrawn and terminated. *See id.*

III. 2018 RPS COMPLIANCE REQUIREMENTS AND BANKED REC TRANSFER

For 2018, each provider of electricity must obtain and retire Class I non-thermal RECs equal to or greater than seven and one-half percent (7.5%) of its total megawatt-hours (MWh) of electricity supplied to end-use customers. *See* Puc 2503.01(b), Table 2500.01. Up to thirty percent (30%) of this RPS obligation for any individual class in any given year may be met with RECs banked by the provider of electricity. *See* RSA 362-F:7; Puc 2503.05(d).

The motion states that TransCanada supplied 53,132 MWh of electricity to customers in New Hampshire in 2018, before it divested its remaining customer contracts to EDF. As a result, using that formula, TransCanada's 2018 Class I non-thermal RPS compliance obligation is 3,985 RECs. The motion explains that TransCanada intends to meet thirty percent (30%) of that obligation with banked RECs. Therefore, TransCanada will use 1,195 of its Class I non-thermal banked RECs.

The use of 1,195 banked Class I non-thermal RECs will leave TransCanada with 11,432 banked Class I non-thermal RECs it can no longer use, both because they will be more than two years old and because TransCanada is no longer a registered CEPS and longer serves load in New Hampshire. According to the motion, however, EDF supplied 234,972 MWh of electricity to former TransCanada customers in New Hampshire during 2018; therefore, EDF would have a use for the RECs to meet its related 2018 RPS compliance obligations. *See* Motion at 2.

The motion explains that TransCanada is willing to give its unneeded 11,432 Class I non-thermal banked RECs to EDF, and EDF wishes to accept those unused banked RECs. Accordingly, the parties request that the Commission approve the transfer of 11,432 Class I non-thermal banked RECs to EDF and recognize that transfer outside of the NEPOOL-GIS system. That joint request is necessary because the applicable trading period for the banked RECs has closed and TransCanada can no longer transfer the RECs to EDF through the NEPOOL-GIS) system. *See* Motion at 4.

The parties assert that the transfer is appropriate because TransCanada's banked RECs were originally purchased to satisfy the RPS obligations associated with those of its customers who, following the asset transfer, have become EDF customers. The parties argue that the requested waivers are in the public interests because the purpose of the Puc 2503.05 banking provisions would be satisfied by the proposed transfer. The parties assert that the waiver would occur in advance of the Commission's July 1 RPS reporting deadline, and therefore would not disrupt the orderly and efficient resolution of matters before the Commission.

IV. STAFF RECOMMENDATION

Staff has reviewed the joint request of EDF and TransCanada. As a preliminary matter, Staff notes that Commission records confirm that TransCanada banked 12,627 vintage 2016 Class I non-thermal RECs, and that those RECs have not been used to date. Staff agrees that the banked RECs were originally purchased to meet TransCanada's RPS obligations corresponding to the energy load of customers, many of which are now served by EDF.

The motion states that, in 2018, EDF's load for customers transferred from TransCanada was 234,972 MWh. Staff will require EDF to provide documentation supporting that calculation with its 2018

RPS compliance report, and Staff's recommendation is contingent upon receipt of adequate supporting documentation for the 234,972 MWh quantity.

Like TransCanada, EDF must obtain and retire Class I non-thermal RECs equal to or greater than seven and one-half percent (7.5%) of its total MWh of electricity supplied to end-use customers. *See* Puc 2503.01(b), Table 2500.01. Applying that formula to EDF's reported load attributable to former TransCanada customers, EDF will be required to obtain and retire 17,623 Class I non-thermal RECs of the appropriate vintage for compliance year 2018. Up to thirty percent (30%) of that obligation may be met with banked RECS, and Staff believes EDF should be permitted to use 5,287 of the 2016 Class I non-thermal RECs banked by TransCanada to cover the former TransCanada customers' load for compliance year 2018.

The parties have asked the Commission to waive applicable rules to allow TransCanada to transfer its unused banked Class I non-thermal RECs to EDF. Staff recommends that transfer of 5,287 of those banked RECs be approved because of the nexus among TransCanada's purpose in obtaining the banked RECs, TransCanada's transfer of customer contracts to EDF, and EDF's assumption of contracts with TransCanada's former customers. It is reasonable to view EDF as standing in TransCanada's shoes for the limited purpose of using banked TransCanada RECs to cover the RPS obligation of the transferred customers' load. In effect, EDF has become the "provider of electricity" with respect to those customers' loads. Staff further notes that TransCanada is not selling the banked RECs to EDF, but instead proposes to "give those excess RECs to EDF." Staff also notes that TransCanada is no longer a registered CEPS in New Hampshire, and therefore it should have no RPS compliance obligation for 2019. *See* Motion at 3-4.

The proposed transfer of banked Class I non-thermal RECs by TransCanada to EDF would occur outside of the NEPOOL-GIS system because the applicable trading deadlines within that system have passed. In effect, the two companies are asking the Commission to approve and recognize a transfer of banked RECs outside of the NEPOOL-GIS system for the purpose of New Hampshire RPS compliance. In order to do so, it is necessary for the Commission to grant waivers of Puc 2503.05(c)(2), Puc 2504.01(c), and 2504.02(c), all of which reference the NEPOOL-GIS system either expressly or implicitly.

Staff recommends that, to the extent the cited rules would permit the use of the banked RECs by TransCanada only, waiver is appropriate because the transferred RECs would be used to meet the 2018 RPS compliance requirements attributable to the load of former TransCanada customer contracts assigned to EDF. The proposed transfer would preserve the value of the banked RECs and serve to maintain a viable and well-regulated REC market. At the same time, the rules waivers necessary to effect the proposed transfer would not result in the effective creation of a "secondary market" for banked RECs under the particular circumstances of this situation, because the RECs would be given and not sold and are effectively following the transfer of customer accounts from one supplier to another. Staff does not believe these circumstances will occur frequently.

For those reasons, the rules waivers would serve the public interest and would not disrupt the orderly and efficient resolution of matters before the Commission. The purpose of the waived rules, sustaining and preserving a viable and effective REC market while preventing the effective development of a "secondary market" for banked RECs, are satisfied by the transfer of the limited number of RECs between the two companies.

Staff notes, however, that certain RPS compliance requirements are not subject to waiver. Vintage 2016 RECs are eligible to be used in the 2018 compliance year, but expire thereafter. *See* Puc 2503.05(b). TransCanada itself would be unable to use its vintage 2016 banked RECs after its 2018 RPS compliance year, were it to remain in operation, and the proposed transfer to EDF would not alter the age

of the banked RECs transferred. *See* RSA 362-F:7. Similarly, only 30% of EDF's class specific REC requirements may be met with banked RECS, irrespective of the source of the RECs. *See* RSA 362-F:7. The proposed transfer would not alter the nature of the RECs as "banked RECs." EDF can only use 5,287 TransCanada banked Class I non-thermal RECs to meet 30% of the load attributable to former TransCanada customers; therefore, Staff recommends that only 5,287 banked Class I non-thermal RECs be approved for transfer and recognized as banked Class I non-thermal RECs for EDF's compliance obligations. In addition, if EDF intends to use its own banked RECs for 2018 compliance, it must do so in compliance with Puc 2503.05(d). Any use of transferred banked RECs to meet the portion of EDF's load corresponding to its non-TransCanada customers, or in excess of 30% of its load, would be contrary to Commission rules, and would essentially create a "secondary market" for banked RECs already retired in the NEPOOL-GIS system. Staff believes that result would be inconsistent with the applicable statute and rules.

In summary, Staff recommends that the Commission grant the rules waivers necessary to permit the proposed transfer of 5,287 Class I non-thermal vintage 2016 RECs banked by TransCanada and to recognize that transfer of the banked RECs for use by EDF to meet its 2018 RPS compliance requirements.

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