**65-407 MAINE PUBLIC UTILITIES COMMISSION**

**Chapter 397: PROCUREMENT OF RENEWABLE RESOURCES WITH A PREFERENCE FOR PROJECTS LOCATED ON CONTAMINATED LAND**

**SUMMARY**: This rule establishes the requirements for the procurement of energy and renewable energy credits from Class IA resources with a preference for projects located on contaminated lands, as set forth in P.L. 2023, c. 321.

**§ 1 PURPOSE**

The purpose of this Chapter is to establish the requirements and processes for the procurement of energy and renewable energy credits from eligible Class IA resources or combined projects with a preference to be given to projects that are located on contaminated lands as set forth in P.L. 2023, c. 321, which is codified in 35-A M.R.S. § 3210-J.

**§ 2 DEFINITIONS**

1. **Combined project.** “Combined project” means an eligible Class IA resource paired and collocated with an energy storage system connected to the State’s electricity grid, whether metered jointly or separately from the eligible Class IA resource.
2. **Commercial operation.** “Commercial operation” means that the Class IA resource in issue is operational and placed in service and that the resource has been constructed, tested, and is fully capable of operating for the purpose of generating electrical energy as contemplated in this Chapter.
3. **Contaminated land.** “Contaminated land” means agricultural land, contaminated by perfluoroalkyl and polyfluoroalkyl substances as defined in 38 M.R.S. section 1614(1)(F) that may no longer be used for its current or historical agricultural purposes as determined by the Department of Agriculture, Conservation and Forestry in accordance with applicable state and federal food safety standards.
4. **Eligible Class IA resource.** “Eligible Class IA resource” means a Class IA resource, as defined in 35-A M.R.S. section 3210(2)(A-3) that: (1) begins commercial operation on or after September 19, 2023; and (2) for which an interconnection agreement has been signed or a system impact study has commenced, if one is required by the relevant Regional Transmission Organization or Independent system Operator or Administrator as recognized by the Federal Energy Regulatory Commission.. If the resource is a fuel cell, it must be a fuel cell that utilizes a renewable fuel.
5. **Energy storage system.** “Energy storage system” means a commercially available technology that uses mechanical, chemical or thermal processes for absorbing energy and storing it for a period of time for use at a later time.
6. **Investor-owned transmission and distribution utility.** “Investor-owned transmission and distribution utility” means a transmission and distribution utility other than a consumer-owned transmission and distribution utility.
7. **ISO-NE.** “ISO-NE” means the Independent System Operator for New England.
8. **Megawatt.** “Megawatt” means 1,000 kilowatts.
9. **Megawatt-hour.** “Megawatt hour” means one megawatt of power sustained for one hour.
10. **Nameplate capacity.** “Nameplate capacity” means the installed or rated capacity of a Class IA resource in Alternating or Direct Current (AC/DC), as applicable to the resource.
11. **Output.** “Output” means the energy, renewable energy certificates and all other environmental attributes and market products that are available or may become available from a Class IA resource and any associated energy storage systems.
12. **Renewable energy credit.** “Renewable energy credit” or “REC” means a credit or certificate that represents renewable attributes of electric power that may be traded separately from the energy commodity.
13. **RFP.** “RFP” means request for proposal, which is the document the Commission will issue to initiate a competitive solicitation process to obtain energy and RECs from Class IA resources as set forth in this Chapter.

**§ 3 COMPETITIVE PROCUREMENT FOR ENERGY AND RECs FROM CLASS IA RESOURCES**

1. **Target Amounts.** The Commission will initiate competitive solicitations for contracts for energy and RECs in an amount that represents the aggregate of the following two separately measured amounts when added together:

* 1. An amount that is equal to 5% of the retail electricity sales in the State for the period of January 1, 2021 to December 31, 2021, which is 579,000 MWh; and
  2. An amount that the Commission will determine prior to issuance of the RFP for the first round of competitive solicitation that is to be conducted pursuant to this chapter, which represents the amount of energy or RECs from Class IA resources that were awarded a contract through the procurement conducted pursuant to 35-A M.R.S. section 3210-G (Docket Nos. 2020-00033 and 2021-00004) that have been terminated as of the date the RFP is issued.

1. **Procurement Rounds, Targets, and Schedule.** The Commission must commence the first competitive solicitation within three months of the adoption of this Chapter. For any amount of energy or RECs that are not procured as part of the first round, the Commission will initiate a second competitive solicitation within twelve months of the conclusion of the first round of procurement. The Commission will initiate subsequent rounds of procurement in the same manner until such time as contracts have been approved in an amount equal to the aggregate amount as determined through paragraph A of this section.
2. **Commencement of Procurement and Issuance of RFP.** The Commission shall initiate each procurement round by issuing an RFP, which shall establish the schedule and process for submission of proposals, as well as the selection process, including selection criteria.
3. **Proposals.** A proposal submitted in response to a Commission issued RFP is firm and binding upon the bidder. Proposals must conform with the requirements specified in the applicable RFP.
   1. Energy storage systems. For combined projects, the bidder must submit two separate proposals: one with the energy storage system and one without the energy storage system. The bidder for a combined project must affirm in their proposal that the energy storage system will remain stationary and under the same ownership as the Class IA resource through the duration of the contract term.
   2. Economic benefits. Each bidder must demonstrate in their proposal the economic and community benefits their proposal will provide, including but not limited to the following:
      1. Jobs that will be created;
      2. Excise, income, property and sales taxes that will be paid; and
      3. Goods and services that will be purchased.

The Commission will provide bidders with a template with instructions on how to submit information on economic and community benefits in monetary values. The Commission will not consider the value of economic benefits in the selection process except as set forth in section 3(E)(4) of this Chapter.

1. **Selection Criteria.** In evaluating proposals, the Commission must consider the following criteria:
   1. Benefit to ratepayers. Only eligible Class IA resources or combined projects for contracts that will benefit ratepayers will be selected. Determination of whether a project will benefit ratepayers is based on the Commission’s assessment of the cost of the contract compared to the value of the contract products realized by ratepayers. Only those projects for which the value of the contracted products realized by ratepayers exceeds the contract cost will be considered as beneficial to ratepayers and thus eligible to be selected for a contract. For purposes of this provision, benefits to ratepayers may include, but are not limited to:
2. Energy and renewable energy credits at costs that are reasonably likely to be below their market value; or
3. Reduced energy supply or transmission-related costs.
   1. Congestion and curtailment. The Commission shall consider the expected effect that the Class IA resource would have on other renewable resources due to congestion and curtailment. Bidders must provide an assessment of the effect of the proposed eligible Class IA resource or combined project on other renewable resources due to congestion and curtailment. The Commission may also request the bidder to provide pricing that eliminates the potential effect of congestion and curtailment. The Commission may also make its own independent assessment of the effect of congestion and curtailment of the proposed Class IA resources.
   2. Preferences. Of those eligible Class IA resources or combined projects that are determined to benefit ratepayers, the Commission will give preference as follows:
      1. Primary preference to those eligible Class IA resources or combined projects that are located on contaminated land. In determining the application of this preference, the Commission will seek the guidance of the Maine Department of Agriculture, Conservation and Forestry (DACF), and may also require bidders to provide confirmation from DACF that the proposed project qualifies for this preference.
      2. Secondary preference to those eligible Class IA resources or combined projects that minimize use of farmland that is not contaminated land and minimize use of forested land.
   3. Economic Benefits. The value of economic benefits will be considered only to the extent necessary to select between identically scored projects. To the extent that economic benefits are considered, the Commission reserves the right to include in the RFP an ongoing reporting requirement to verify fulfillment of the economic benefits.
4. **Contract terms.** The contracts entered into through this Chapter will be for a term of no longer than 20 years, unless the Commission determines that a contract for a longer term is in the public interest.
5. **Assignment of RECs.** The RECs procured through this Chapter will be assigned to a standard offer service provider to satisfy that standard offer service provider’s renewable resource portfolio requirements as set forth in 35-A M.R.S. section 3210. The Commission will establish a process for assignment of the RECs through amendment of this Chapter, or through a separate rulemaking prior to commercial operation of any eligible Class IA resource selected for a contract through this Chapter.
6. **Standard contract.** The Commission will make the standard contract that it expects an eligible Class IA resource to enter into with the transmission and distribution utility, if selected, available as part of the initial competitive solicitation.

**§ 4 WAIVER PROVISIONS**

Upon the request of any person subject to this Chapter or upon its own motion, the Commission may, for good cause, waive any requirement of this Chapter that is not required by statute. The waiver may not be inconsistent with the purposes of this Chapter or Title 35-A. The Commission, the Director Electric and Gas Utility Industries, or the Presiding Officer assigned to a proceeding related to this Chapter may grant the waiver.

BASIS STATEMENT: The factual and policy basis for this Rule is set forth in the Commission’s Order Adopting Rule and Statement of Factual and Policy Basis, Docket No. 2024-00028, issued on July 24, 2024. Copies of this Statement and Order have been filed with this rule at the Office of the Secretary of State. Copies may also be obtained from the Administrative Director, Public Utilities Commission, 18 State House Station, Augusta, Maine, 04333-0018.

STATUTORY AUTHORITY: 35-A M.R.S. §§ 104, 111, 1301, P.L. 2023 c. 321

**EFFECTIVE DATE:** This rule was approved as to form and legality by the Attorney General on July 29, 2024. It was filed with the Secretary of State on August 5, 2024 and became effective on August 10, 2024 (filing 2024-172).