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In the Matter of	:	**September 29, 2022**
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ReEnergy Holdings LLC	:	

Response to Petition for Declaratory Ruling filed by ReEnergy Holdings LLC

ReEnergy Holdings LLC ("ReEnergy" or "Petitioner") filed a petition with the Department of Energy and Environmental Protection ("DEEP" or "Department") on June 16, 2022 for a declaratory ruling (the "Petition") dated June 16, 2022, regarding the applicability of the statutory exemption from any reduction in the value of Renewable Energy Certificates ("RECs") for biomass resources, as provided in Connecticut General Statutes ("C.G.S.") §16-245a(g), to its biomass facilities located in Stratton, Maine (the "Stratton Facility") and in Livermore Falls, Maine (the "Livermore Falls Facility," collectively, the "Facilities"). It is Petitioner's position that the Facilities "are exempt from any phase-down of the REC value implemented pursuant to §16-245a(g) and that 100% of the RECS to be generated by these facilities will qualify as Class I RECs under §16-245a." It is Petitioner's position that this exemption is "full and unconditional".

Petitioner filed this Petition along with the following supporting documentation: Attachment 1, Attachment 2. DEEP did not receive any further comments on the Petition from any interested parties, including the Petitioner, during the comment period.

I. Background

Pursuant to C.G.S. §16-245a(g), DEEP is required to establish a schedule for the gradual phasedown of renewable energy credit ("REC") value for biomass and landfill gas resources that qualify as Class I resources as defined in C.G.S. §16-1.[1] This statute authorizes DEEP to review

[1] C.G.S. §16-245a(g) provides in whole: (g) On or before January 1, 2014, the Commissioner of Energy and Environmental Protection shall, in developing or modifying an Integrated Resources Plan in accordance with sections 16a-3a and 16a-3e, establish a schedule to commence on January 1, 2015, for assigning a gradually reduced renewable energy credit value to all biomass or landfill methane gas facilities that qualify as a Class I renewable energy source pursuant to section 16-1, provided this subsection shall not apply to anaerobic digestion or other biogas facilities, and further provided any reduced renewable energy credit value established pursuant to this section shall not apply to any biomass or landfill methane gas facility that has entered into a power purchase agreement (1) with an electric supplier or electric distribution company in the state of Connecticut on or before June 5, 2013, or (2) executed in accordance with section 16a-3f or 16a-3h. The Commissioner of Energy and Environmental Protection may review the schedule established pursuant to this subsection in preparation of each subsequent Integrated Resources Plan developed pursuant to section 16a-3a and make any necessary changes thereto to ensure that the rate

and update the schedule in each subsequent Integrated Resources Plan (IRP) in order to account for current market conditions and ensure that the schedule will not negatively impact Connecticut's ability to meet its renewable portfolio standard (RPS) requirements.

Phasedown Implementation Plan

Per the Final 2020 IRP, released on October 7, 2021, DEEP determined that the phasedown of RECs for Class I biomass resources should take effect beginning January 1, 2022.[2] On and after that date eligible Class I biomass RECs produced by biomass generators will be reduced. Any existing biomass facilities will be subject to the phasedown starting 15 years from their Connecticut Class I Certification date, and new biomass facilities built after January 1, 2022 will begin to be phased down 20 years after their Connecticut Class I Certification.[3] After the initial 15- or 20-year license period ends, the amount of generation eligible as a Class I resource in Connecticut will be reduced for each biomass project to 50 percent of annual output. In other words, Class I RECs will still be generated as they have been, but the amount of generation eligible as a Class I resource in Connecticut will decline to 50 percent of the actual generation output from the facility each year. One MWh would still be required to be produced to receive a REC in Connecticut. A REC for a Class I biomass facility would not be treated any differently from CT Class I RECs from other eligible resources for the purpose of supplier compliance. The other 50 percent of the annual generation output, which is not eligible in Connecticut, would still be eligible to be sold to meet RPS requirements in other states, to the extent the resource is eligible to participate in those other state RPS programs.

Status of Phasedown Implementation Plan

Implementing the phasedown of biomass resources as Class I in Connecticut's RPS requires changes to the New England Power Pool Generation Information System (NEPOOL GIS). The NEPOOL GIS serves as the registry and tracking database for renewable energy resources and is used to track compliance with state and regional renewable energy requirements, such as the RPS. Any changes made to NEPOOL GIS must be first voted on and approved by the NEPOOL Markets Committee.

On September 14, 2021, the Markets Committee voted to approve Connecticut's proposed biomass phasedown implementation plan, and any associated technical changes to the GIS.[4] The Department subsequently worked with the administrator of the NEPOOL GIS (APX) to implement the necessary technical changes. These changes were completed in November 2021 and the phasedown implementation went into effect on January 1, 2022, as planned.

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of reductions in renewable energy credit value for biomass or landfill methane gas facilities is appropriate given the availability of other Class I renewable energy sources.

[2] *See* Connecticut Department of Energy and Environmental Protection Integrated Resources Plan, October 2021, pages 191-192, available here. The implementation of this phasedown was voted on and approved at the September 14, 2021 NEPOOL Markets Committee Meeting.

[3] For example, if a facility was certified as Connecticut Class I in 2005, the phasedown would apply to them starting January 1, 2022. If the facility was certified as Connecticut Class I in 2010, the phasedown would apply to them starting in 2025.

[4] *See* NEPOOL Markets Committee, *Minutes of the NEPOOL Markets Committee Meeting Teleconference/ Webex.* September 13-14, 2021, *available at https://www.iso-ne.com/committees/markets/markets-committee/?sort=publish_date_dt.desc*

Findings of Fact

Petitioner's supporting documentation consisted of two Electricity Purchase Agreements, one for the Stratton Facility ("Stratton Agreement") and one for the Livermore Falls Facility (Livermore Falls Agreement"). *See* Attachments 1 and 2, respectively. The Stratton Facility, according to the Stratton Agreement, has a nameplate capacity of approximately 45 megawatts. The Stratton Agreement was entered into as of May 23, 2013 between ReEnergy and NextEra Energy Services Connecticut, LLC ("NextEra Retail"). Its terms state that the agreement ends on April 30, 2023. The Livermore Falls Facility, according to the Livermore Falls Agreement, has a nameplate capacity of approximately 35 megawatts. Similarly, the Livermore Falls Agreement was entered into between ReEnergy and NextEra Retail as of May 23, 2013 and ends on April 30, 2023.

Under both the Stratton and Livermore Falls Agreement, the current term is defined as "Delivery Period No. 3," in which there is not a set amount of capacity that NextEra Retail is required to purchase. Rather, the parties are subject to a system in which NextEra Retail, on an annual basis, offers ReEnergy a price quote, which ReEnergy may accept or reject. Presumably, the amount of capacity currently under contract with the ReEnergy facilities would be based on NextEra Retail's retail load obligation in Connecticut.

NextEra Retail was an electric supplier in the state of Connecticut at the time that the power purchase agreements were entered into[5] and continues to be so today.[6] Therefore, the Stratton and Livermore Falls Facilities are currently under contract with an electric distribution company in the state of Connecticut, with the level of output under contract at potentially varying levels. In addition, the Stratton and Livermore Facilities had entered into a power purchase agreement with an electric supplier in the state of Connecticut on or before June 5, 2013.

Finally, DEEP notes that the Stratton and Livermore Falls Facilities are biomass facilities that currently qualify as Class I renewable energy sources.[7]

Determination

DEEP confirms that the Stratton and Livermore Falls Facilities currently qualify for the first category of the statutory exemption from the gradually reduced renewable energy credit value for Class I biomass facilities, as authorized by C.G.S. §16-245a(g). This exemption applies to a facility for the duration of a power purchase agreement that was in place on or before the statutory deadline of June 5, 2013, or, in this case, April 30, 2023 for both Facilities.

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[5] Docket No. 14-05-35, *Annual Review of Connecticut Electric Suppliers; and Electric Distribution Companies' Compliance with Connecticut's Renewable Energy Portfolio Standards in the Year 2013*.

[6] Docket No. 20-06-01, *Annual Review of Connecticut Electric Suppliers' and Electric Distribution Companies' Compliance with Connecticut's Renewable Energy Portfolio Standards in the Year 2019*. *See also* The Connecticut Public Utilities Regulatory Authority listing of licensed Suppliers and Aggregators, accessed September 8, 2021.

[7] Docket No. 05-03-12, *Application for Advisory Ruling on Eligibility for Class I Renewable Status Pursuant to Connecticut's Renewable Portfolio Standards*, August 10, 2005 Final Decision at 3 and Docket No. 05-04-16, *Application of Boralex Stratton Energy Inc.*, June 30, 2005 Final Decision at 4.

In its Petition, ReEnergy states that the exemption in C.G.S. §16-245(g) sets "no conditions or limitations based on the volume purchased by the electric supplier or the term of the agreement, for a facility to meet the eligibility criteria for an exemption from the biomass phasedown." *See* Petition page 6. Petitioner points out that DEEP's determination in the 2020 IRP that the Plainfield Renewable Energy plant, the subject of a related Petition for Declaratory ruling, meets the criteria of the phasedown similarly "does not limit or condition the duration of the statutory exemption for the Plainfield Facility in any way." *Id.*

DEEP agrees that the Stratton and Livermore Falls Facilities meet the criteria for an exemption under C.G.S. §16-245a(g). DEEP also agrees that the exemption applies to the facility itself, not the amount of output for which the facility contracted prior to June 5, 2013. This determination to apply the exemption to the facility itself is based on the statutory language, which provides an exemption for a facility under contract, rather than the output of energy under contract. In addition, this determination is rooted in the practical implications of determining the percentage of output to which the exemption applies, such as in the instance of a contract that is structured as an options contract, as is the current "Delivery Period No. 3" for both the Stratton and Livermore Falls Agreements.

However, DEEP disagrees with the "permanent" characterization of the exemption under C.G.S. § 16-245a(g), which would allow for ReEnergy to continue to claim Class I renewable status for its Facilities' output if it were to continually contract with a Connecticut electric supplier or electric distribution company. Turning to the statute itself, DEEP is directed by C.G.S. §1-2z to ascertain the meaning of a statute "from the text of the statute itself." The exemption subsection does not solely focus on the biomass facilities that were in existence at the time of its passage, but rather links the qualification for the exemption to power purchase agreements that existing biomass facilities had already executed shortly before the time of its passage. The subsection does not reference future agreements or amendments of agreements past the June 5, 2013 date. Once the agreements that were signed prior to June 5, 2013 expire, this date referenced in the statute cannot be cast aside. A statute must be read as a whole rather than in separate parts. *See Wiseman v. Armstrong*, 269 Conn. 802, 810, 850 A.2d 114 (2004).

In addition, when "construing statutes, we presume that there is a purpose behind every sentence, clause, or phrase used in an act and that no part of a statute is superfluous…" *Lopa v. Brinker Int'l, Inc.*, 296 Conn. 426, 433 (2010) (citation omitted; internal quotation marks omitted.) The contract date reference in C.G.S. §16-245a(g) acts as temporary protection for the financial obligations within contracts that existed at the time the legislation passed, while eventually still allowing for the advancement of the biomass phasedown, a policy goal that will "[allow] more of the State's funding to be targeted towards eligible zero carbon resources, and better aligning it with its 100% Zero Carbon Target." *See* October 2021 IRP, p. 192.

Conclusion

For the reasons stated above, DEEP determines that the full output of the Stratton and Livermore Falls Facilities qualifies for an exemption from the gradually reduced renewable energy credit value for Class I biomass facilities under C.G.S. §16-245a(g) until April 30, 2023. This exemption does not apply to the Stratton and Livermore Falls Facilities ad infinitum. Upon expiration of the exemption, the amount of generation eligible as a Class I resource in

Connecticut will be reduced to 50 percent of annual output 15 years from the Facilities' Connecticut Class I Certification date.

Victoria Hackett

Victoria Hackett, Interim Deputy Commissioner

September 29, 2022

Date