HB 1535 – relative to clarifying eligible renewable energy classes under the Renewable Portfolio Standard

Background Information

In the 2007 original enactment of Chapter 362-F, "methane gas" was listed as an eligible fuel source for Class I Renewable Energy Credit (REC) production in RSA 362-F:4, I(e). The definition of "methane gas" was enacted as RSA 362-F:2, XI:

> XI. "Methane gas" means biologically derived methane gas from anaerobic digestion of organic materials from such sources as yard waste, food waste, animal waste, sewage sludge, septage, and landfill waste.

That definition remains the same today. However, in 2018, at the behest of Liberty Utilities, which was hoping to develop a renewable natural gas product, the reference to methane gas was amended to allow for methane gas, e.g. landfill gas, to also qualify if the energy output is in the form of useful thermal energy, as is provided for other fuel sources. Here is how RSA 362-F:4, I reads today, with the original language highlighted in yellow and the language added in 2018 by SB 577, Chapter 340 NH Laws of 2018 shown in bold italics.

> 362-F:4 Electric Renewable Energy Classes. –
>
> I. Class I (New) shall include the production of electricity or useful thermal energy from any of the following, provided the source began operation after January 1, 2006, except as noted below:
>
> (a) Wind energy.
>
> **(b) Geothermal energy,** if the geothermal energy output is in the form of useful thermal energy only if the unit began operation after January 1, 2013.
>
> (c) Hydrogen derived from biomass fuels, water, or methane gas.
>
> (d) Ocean thermal, wave, current, or tidal energy.
>
> (e) Methane gas ***if the methane gas energy output is in the form of useful thermal energy provided that the unit began operation after January 1, 2013.***
>
> **(f) Eligible biomass technologies.**
>
> **(g) Solar thermal energy;** if the solar thermal energy output is in the form of useful thermal energy only if the unit began operation after January 1, 2013.
>
> (h) Class II sources [e.g. solar PV) to the extent that they are not otherwise used to satisfy the minimum portfolio standards of other classes. . . .

Note how there is no comma or semi-colon following the words "Methane gas" as there are in the two other similar **highlighted** subparagraphs. Due to the lack of such comma or semi-colon the NH Department of Energy has interpreted that 2018 change in law to only allow methane gas to qualify for Class I RECs if it is in the form of useful thermal energy,

while geothermal energy and solar thermal energy qualify if used for either electricity generation or as useful thermal energy.

PUC rules implementing the Renewable Portfolio Standard, Puc 2500, adopted before 2018 and not updated since, provide that:

> Puc 2502.07 "Class I source" means:
>
> (a) Pursuant to RSA 362-F:4, I(a), (c), (d), (e) and (f) a generation facility that began operation after January 1, 2006, and that produces electricity from any of the following:
>
> (1) Wind energy;
> (2) Hydrogen derived from biomass fuel or methane gas;
> (3) Ocean thermal, wave, current, or tidal energy;
> (4) Methane gas; or
> (5) Biomass;

Notwithstanding those rules. in 2025 the NH DOE interpreted the 2018 amendment as intending to disqualify electricity generated by methane gas from the RPS. Thus they denied the City of Lebanon's application to qualify its recently completed 1 MW landfill gas to electricity (LFGTE) facility for the production of NH Class I RECs. Fortunately, Rhode Island did qualify Lebanon NH's LFGTE for RECs under their RPS, but it would be preferable if Lebanon New Hampshire could generate New Hampshire RECs.

A careful review of the legislative history of 2018 SB 577 does not suggest any legislative intent to disqualify landfill gas used to generate electricity from qualifying for Class I REC production. This provision was not in the bill as introduced. The Senate history discusses the reason for the amendment on p. 23 of the PDF (testimony in support of amendment 2018-0658s): "to answer a question over whether or not RSA362-F:4 precluded the use of thermal energy from methane gas."

Likewise the House legislative history shows no indication that the intent was to exclude "methane gas" from being used to generate electricity for Class I RECs, but rather to add the thermal option. Liberty's testimony can be found on p. 39 of the House legislative history PDF. Rep. Douglas Thomas reported the bill OTPA on the consent calendar with this relevant statement in the blurb:

> "Part III allows methane gas energy in the form of useful thermal energy produced by facilities beginning operation after 2013 to be included in Class I of the RPS statute."

Liberty never developed its renewable natural gas project and this provision for RECs from useful thermal energy from methane gas does not appear to have been used to date.

Electricity generated from methane gas in generators built before 2006 qualify for Class III NH REC production.