

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 08-053

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

DE 08-123 and DE 08-124

FPL ENERGY MAINE HYDRO, LLC

**Class IV Renewable Energy Certificate Eligibility Application for
Certain Existing Small Hydroelectric Facilities**

Order Denying Motion for Rehearing

ORDER NO. 24,952

March 23, 2009

On March 12, 2009, FPL Energy Maine Hydro, LLC¹ (FPL) filed a motion for reconsideration or, in the alternative, rehearing, regarding our determination in *Public Service Co. of N.H and FPL Energy Maine Hydro, LLC*, Order No. 24,940 (February 6, 2009) to annul the Class IV source certifications, pursuant to RSA 362-F, of the Canaan, Gorham, Hooksett and Jackman Hydroelectric facilities owned by Public Service Company of New Hampshire (PSNH), which had been previously certified on September 23, 2008, and the North Gorham and Bar Mills projects owned by FPL, which had been previously certified by the Commission on October 30, 2008.²

¹ Maine Hydro is a wholly owned indirect subsidiary of NextEra Energy Resources, LLC (formerly FPL Energy, LLC). FPL Energy, LLC changed its name to NextEra Energy Resources, LLC on January 7, 2009.

² For a full procedural history of Docket No.'s DE 08-053, DE 08-123 and DE 08-124, See *Public Service Co. of N.H and FPL Energy Maine Hydro, LLC*, Order No. 24,940 (February 6, 2009).

FPL states that since Order No. 24,940 was issued, the New Hampshire Legislature has taken initial action on a bill (HB 229, 2009 Session) clarifying certain eligibility requirements for Class IV renewable energy generating facilities.³ FPL asserts that this legislation comprises new evidence which was not available at the time we rendered our decision to annul the certifications. FPL argues that, if HB 229 is passed and signed into law, the legislation would bear directly on the eligibility of these projects to produce Class IV RECs prior to the effective date of the newly amended provision.

FPL states that this legislation will amend RSA 362-F:4, IV by initially clarifying the intent related to which hydroelectric facilities are to be eligible for Class IV RECs as follows:

(a) Class IV (Existing Small Hydroelectric) shall include the production of electricity from hydroelectric energy, provided the [source] facility began operation prior to January 1, 2006, has a [gross] total nameplate capacity of 5 MWs or less as measured by the sum of the nameplate capacities of all the generators at the facility, has actually installed both upstream and downstream diadromous fish passages [that have been required and approved under the terms of its license or exemption from] and such installations have been approved by the Federal Energy Regulatory Commission, and when required, has documented applicable state water quality certification pursuant to section 401 of the Clean Water Act for hydroelectric projects.

FPL asserts that, while this clarification affirms our interpretation of legislative intent in Order No. 24,940, the proposed amendment to RSA 362-F:4, IV would also provide a limited exception for facilities that were previously certified by us as being eligible to produce Class IV RECs. The exception states as follows:

(b) Previously certified class IV sources that no longer meet certification requirements under this paragraph shall have their class IV certifications automatically revoked upon the effective date of this subparagraph. The commission shall issue all appropriate forms of notification to the previously certified class IV sources, and to the general information system (GIS) administrator, notifying the parties that certification

³ Currently, this legislation has passed the New Hampshire House of Representatives by voice vote on March 4, 2009 and must still be considered by the New Hampshire Senate.

has been revoked and specifying the date that certification was revoked. All class IV renewable energy certificates created before the effective date of this subparagraph by previously certified class IV sources, that will no longer be certified under this subparagraph, shall remain valid class IV renewable energy certificates that can be used or acquired for purposes of compliance with the electricity provider's requirements for class IV under RSA 362-F:3. Certificates shall be created by generation from a certified class IV facility.

FPL argues as follows: “assuming the passage of this amended provision, the Legislature clearly intends for Maine Hydro’s North Gorham Project and Bar Mills Project (and certain PSNH projects) to be eligible for Class IV RECs during the period prior to the effective date of the new RSA 362-F:4, IV(b) – January 1, 2010, as provided for in the legislation.” FPL Motion at 5. Therefore, FPL contends that it would be contrary to the legislative intent of a pending legislative proposal, HB 229, for the Commission to uphold its decision in Order No. 24,940 to annul the certifications of the subject projects.

Pursuant to RSA 541:3, the Commission may grant rehearing or reconsideration when the motion states good reason for such relief. RSA 541:4 provides that a motion for rehearing must set forth grounds by which the decision is either unlawful or unreasonable. In its motion, FPL noted that we had previously found that one reason for reconsidering a decision is the demonstration by a party that new evidence exists that was not available at the original hearing. *See, Verizon New Hampshire Petition to Approve Carrier to Carrier Performance Guidelines*, Order No. 23,976, 87 NH PUC 334, 338 (2002). In relevant part, our discussion in Order No. 23,976 regarding motions for rehearing states as follows:

“Motions for rehearing and/or reconsideration of a Commission order are governed by RSA 541. RSA 541:3 directs that the Commission may grant a motion for rehearing ‘if in its opinion good reason for the rehearing is stated in the motion.’ Pursuant to New Hampshire case law, ‘good reason’ is shown, for example, when a party explains that new evidence exists that was unavailable at the original hearing. *Dumais v. State*, 118 NH 309,386 [remaining citations omitted]. As stated in *Dumais*, 118 at 312, the purpose

of a rehearing is to provide consideration of matters that were either overlooked or 'mistakenly conceived' in the original decision." 87 NH PUC 334, 338 (2002).

When we issued Order No. 24,940, we were aware that HB 229 had been introduced to clarify the eligibility of small hydroelectric plants to produce Class IV RECs. Further, as noted in Order No. 24,940 (February 5, 2009), Granite State Hydropower Association, Ashuelot River Hydro, Inc. and PSNH forwarded to the Commission's Executive Director an electronic copy of a proposed settlement of these proceedings, referring to HB 229 and indicating that they would "endeavor to bring FPL Energy into this settlement." *Id.* at 4-5. Therefore, we do not agree with FPL's assertion that the existence, content or status of HB 229 is new evidence which constitutes "good cause" for us to reconsider our decision to annul the Class IV certification of the PSNH and FPL hydropower facilities.

We note that FPL does not argue that we misinterpreted RSA 362-F,IV in Order No. 24,940. In point of fact, HB 229 would conform what we referred to as a "confused and ambiguous statute" (Order No. 24,940 slip op. at 16) to our interpretation of the law by stating that an eligible hydropower facility must have actually installed both upstream and downstream diadromous fish passages.

Finally, in Order No. 24,940, we interpreted existing law. FPL has presented no legal authority to support its contention that our interpretation of existing law should be influenced by proposed statutory changes.

RSA 362-F:4, IV currently provides that:

"Class IV (Existing Small Hydroelectric) shall include the production of electricity from hydroelectric energy, providing the source began operation prior to January 1, 2006, has a gross nameplate capacity of 5 MWs or less, has installed upstream and downstream diadromous fish passages that have been required and approved under the terms of its license or exemption from the Federal Energy Regulatory Commission, and when

required, has documented applicable state water quality certification pursuant to section 401 of the Clean Water Act for hydroelectric projects.”

In Order No. 24,940 we discussed the legislative history of RSA 362-F:4, IV and concluded:

“While the legislation could have been more artfully worded to clearly indicate the Legislature’s intent, the transcript of the Hearing serves to resolve the disputed interpretations. Accordingly, we determine that the Canaan, Gorham, Hooksett and Jackman facilities, and the North Gorham and Bar Mills projects, are not eligible for certification as Class IV facilities as a matter of law.” Slip Op. at 18.

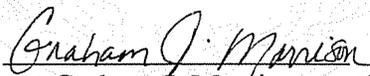
We affirm this holding and deny the motion for rehearing.

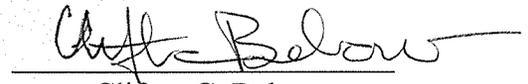
Based upon the foregoing, it is hereby

ORDERED, that FPL Energy Maine Hydro, LLC’s Motion for Reconsideration or, in the alternative, Rehearing, is hereby DENIED.

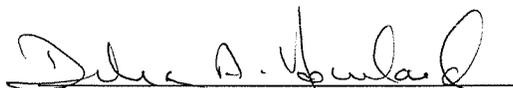
By order of the Public Utilities Commission of New Hampshire this twenty-third day of March, 2009.


Thomas B. Getz
Chairman


Graham J. Morrison
Commissioner


Clifton C. Below
Commissioner

Attested by:


Debra A. Howland
Executive Director

GERALD M EATON
PUBLIC SERVICE COMPANY OF NEW H
780 N COMMERCIAL ST
PO BOX 330
MANCHESTER NH 03105-0330

NATE STEVENS
FPL ENERGY MAINE HYDRO
160 CAPITAL STREET
SUITE 8
AUGUSTA ME 04330

SUSAN GEIGER
ORR & RENO PC
ONE EAGLE SQUARE
PO BOX 3550
CONCORD NH 03302-3550

SUZANNE HARVEY
NEW HAMPSHIRE STATE REPRESENT
8 CRAWFORD LANE
NASHUA NH 03063-1501

HOWARD M MOFFETT
ORR & RENO PA
1 EAGLE SQ
PO BOX 3550
CONCORD NH 03302

JOANNE MORIN
NEW HAMPSHIRE DEPARTMENT OF E
PO BOX 95
29 HAZEN DR
CONCORD NH 03302-0095

JOEL D NEWTON
FPL ENERGY MAINE HYDRO
801 PENNSYLVANIA AVE NW STE 220
WASHINGTON DC 20004

CATHERINE SHIVELY
PUBLIC SERVICE COMPANY OF NEW H
780 N COMMERCIAL ST
PO BOX 330
MANCHESTER NH 03105-0330

WILLIAM SMAGULA
PUBLIC SERVICE COMPANY OF NEW H
PO BOX 330
MANCHESTER NH 03105-0330

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SUZANNE AMIDON
NHPUC
21 SOUTH FRUIT ST, SUITE 10
CONCORD NH 03301-2429

HENRY BERGERON
NHPUC
21 SOUTH FRUIT ST, SUITE 10
CONCORD NH 03301-2429

AL-AZAD IQBAL
NHPUC
21 SOUTH FRUIT ST, SUITE 10
CONCORD NH 03301-2429

AMANDA NOONAN
CONSUMER AFFAIRS DIRECTOR
NHPUC
21 SOUTH FRUIT ST, SUITE 10
CONCORD NH 03301-2429

NATE STEVENS
FPL ENERGY MAINE HYDRO
160 CAPITAL STREET
SUITE 8
AUGUSTA ME 04330

JAMES WEBB
APX ENVIRONMENTAL MARKETS
5201 GREAT AMERICAN PARKWAY ST
SANTA CLARA CA 95054

F ALLEN WILEY
FPL ENERGY MAINE HYDRO
160 CAPITOL ST STE 8
AUGUSTA ME 04330

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NHPUC
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CONCORD NH 03301-2429

AMANDA NOONAN
CONSUMER AFFAIRS DIRECTOR
NHPUC
21 SOUTH FRUIT ST, SUITE 10
CONCORD NH 03301-2429

NATE STEVENS
FPL ENERGY MAINE HYDRO
160 CAPITAL STREET
SUITE 8
AUGUSTA ME 04330

JAMES WEBB
APX ENVIRONMENTAL MARKETS
5201 GREAT AMERICAN PARKWAY ST
SANTA CLARA CA 95054

F ALLEN WILEY
FPL ENERGY MAINE HYDRO
160 CAPITOL ST STE 8
AUGUSTA ME 04330

NATE STEVENS
FPL ENERGY MAINE HYDRO
160 CAPITAL STREET
SUITE 8
AUGUSTA ME 04330

JAMES WEBB
APX ENVIRONMENTAL MARKETS
5201 GREAT AMERICAN
PARKWAY ST
SANTA CLARA CA 95054

F ALLEN WILEY
FPL ENERGY MAINE HYDRO
160 CAPITOL ST STE 8
AUGUSTA ME 04330

NATE STEVENS
FPL ENERGY MAINE HYDRO
160 CAPITAL STREET
SUITE 8
AUGUSTA ME 04330

JAMES WEBB
APX ENVIRONMENTAL MARKETS
5201 GREAT AMERICAN
PARKWAY ST
SANTA CLARA CA 95054

F ALLEN WILEY
FPL ENERGY MAINE HYDRO
160 CAPITOL ST STE 8
AUGUSTA ME 04330

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LIBRARIAN
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21 SOUTH FRUIT ST, SUITE 10
CONCORD NH 03301-2429

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SUZANNE AMIDON
NHPUC
21 SOUTH FRUIT ST, SUITE 10
CONCORD NH 03301-2429

HENRY BERGERON
NHPUC
21 SOUTH FRUIT ST, SUITE 10
CONCORD NH 03301-2429

AMANDA NOONAN
CONSUMER AFFAIRS DIRECTOR
NHPUC
21 SOUTH FRUIT ST, SUITE 10
CONCORD NH 03301-2429