

STATE OF NEW HAMPSHIRE

Inter-Department Communication

DATE: March 19, 2009

AT (OFFICE): NHPUC

FROM: Maureen L. Reno, *MR*
Utility Analyst

SUBJECT: Docket Numbers DE 09-017, DE 09-018, DE 09-019, DE 09-020, DE 09-021, DE 09-022, DE 09-023, DE 09-024 and DE 09-025
Algonquin Power Systems Inc.
Applications for Class IV Certification pursuant to RSA 362-F
Staff Recommendation

TO: Commissioners
Debra A. Howland, Executive Director and Secretary

CC: Jack K. Ruderman, Director of the Sustainable Energy Division
Suzanne Amidon, Staff Attorney *JA*

On February 11, 2009, Algonquin Power Systems Inc. (Algonquin Power) submitted a series of applications requesting the Commission grant approval of nine small hydroelectric facilities in Laconia, Goffstown, Franklin, Tilton, Nashua, Lochmere, Suncook, and Milton, New Hampshire (small hydroelectric facilities) to produce Class IV renewable energy certificates (RECs) pursuant to RSA 362-F, New Hampshire's Renewable Portfolio Standard legislation. Pursuant to RSA 362-F:4, IV, Class IV eligibility requires that a facility: 1) began operation prior to January 1, 2006; 2) has a gross nameplate capacity of 5 megawatts or less; 3) has installed upstream and downstream diadromous fish passages, and 4) when required, has documented applicable state water quality certification pursuant to section 401 of the Clean Water Act.

Pursuant to RSA 362-F, the Commission, in a non-adjudicative process, must issue a determination of whether a facility meets a particular classification within 45 days of a completed application. Algonquin Power's small hydroelectric facilities applications are currently incomplete as the applicant has not definitively responded to Staff's requests for additional information sent to the applicant on February 27, 2009. Specifically, Staff sent an e-mail to the applicant requesting information on whether the facilities have upstream and downstream fish passages and whether the facilities have obtained all necessary state water quality certifications pursuant to section 401 of the Clean Water Act. In response to Staff's information request, the applicant stated that the rules are not clear about facilities needing both upstream and downstream fish passage

and that he did not believe that any of his facilities have both. On March 3, 2009, Staff informed the applicant that the rules do not reflect the Commission's February 6th decision that hydroelectric facilities must have both upstream and downstream fish passages. Staff provided the applicant with Order Number 24,940 in DE 08-053. Staff also asked the applicant to provide a more definitive answer and the applicant responded that given the Commission's recent decision the applications are "null and void." Staff interprets this answer to mean that none of the facilities have both upstream and downstream diadromous fish passages.

Recommendation

Staff recommends that the Commission close these dockets. Given that Algonquin Power has indicated that its small hydroelectric facilities do not have both upstream and downstream diadromous fish passages, the facilities do not meet the requirements set forth in RSA 362:f:4, IV and, as a result, such facilities are not eligible to produce New Hampshire Class IV RECs.