

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 08-053

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

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

**Order Commencing Adjudicative Proceeding
and Scheduling a Prehearing Conference**

ORDER NO. 24,908

October 28, 2008

I. BACKGROUND

On April 2, 2008, Public Service Company of New Hampshire (PSNH) filed an application for Renewable Energy Certificate (REC) eligibility for eight existing small hydroelectric facilities it owns and operates in Bow (Garvins Falls), Bristol (Ayers Island), Franklin (Eastman Falls), Gorham (Gorham), Hillsborough (Jackman), Hooksett (Hooksett), Manchester (Amoskeag) and West Stewartstown (Canaan). PSNH filed the application pursuant to N.H. RSA 362-F, the Electric Renewable Portfolio Standard law. In its application, PSNH requested that the Commission certify the small hydroelectric facilities as sources eligible to produce Class IV Renewable Energy Certificates (RECs) pursuant to RSA 362-F:4, IV.

On September 23, 2008, the Commission issued a secretarial letter certifying the Gorham, Jackman, Hooksett, and Canaan facilities as eligible to produce Class IV RECs. In the same letter, the Commission denied certification for the Garvins Falls, Ayers Island, Eastman Falls and Amoskeag facilities because those sources exceed the 5 megawatt (MW) nameplate capacity established in RSA 362-F:4, IV. The Commission also noted that the Granite State

Hydropower Association (GHSAs) had filed several motions between May and August of 2008 that were not contemplated under the Commission's rules. In a separate secretarial letter issued on September 23, 2008, the Commission advised GHSAs that its various motions were premature and dismissed without prejudice, but the Commission indicated that if GHSAs was aggrieved it could file a petition pursuant to Puc 2505.13.

On October 3, 2008, Granite State Hydropower Association and Ashuelot River Hydro, Inc. (collectively, Petitioners) filed a petition requesting that the Commission open an adjudicative proceeding to allow Petitioners to challenge the Commission's interpretation of the fish passage requirements in RSA 362-F:4, IV. The Petitioners also moved for rehearing and requested suspension of the certification of four of PSNH's hydroelectric facilities to produce Class IV RECs pending the conclusion of the adjudicative proceeding. In support of the petition, the Petitioners claim that the Commission's interpretation of the fish passage requirements of RSA 362-F:4, IV diminished the value of Class IV RECs to the detriment of other small hydroelectric facilities, which had Federal Energy Regulatory Commission (FERC) licenses that required the installation of both upstream and downstream fish passages.

On October 10, 2008, PSNH filed an objection to the Petitioners' request that the Commission suspend its decision regarding the eligibility of the Gorham, Jackman, Hooksett and Canaan hydroelectric facilities. In addition, PSNH requested an adjudicative proceeding to challenge the Commission's denial of Class IV certification to the Garvins Falls, Ayers Island, Eastman Falls and Amoskeag facilities based on the 5 MW nameplate capacity limitation of RSA 362-F:4, IV.

II. COMMISSION ANALYSIS

Based on our review of the petitions and objection, we find that both the Petitioners and PSNH have shown that good cause exists for commencing an adjudicative proceeding pursuant to N.H. Code Admin. Rules Puc 2505.13. While the issues in dispute, i.e., the interpretation of RSA 362-F:4, IV as it applies to the 5 MW nameplate capacity of a source, and the installation of upstream and downstream fish passages as required by a FERC license, appear at their essence to be questions of statutory interpretation, both the petitioners and PSNH have made certain factual allegations. As a result, we will schedule a prehearing conference; but to facilitate the proceedings we are hopeful that the parties will have reached agreement in advance regarding any necessary stipulations or admissions as to issues of fact and a procedural schedule that permits a prompt consideration of these legal issues of first impression. As for the Petitioners' motion to suspend, we will defer consideration of that issue until after the prehearing conference. Finally, we find that the Petitioners' motion for rehearing is premature inasmuch as we have commenced by this order an adjudicative proceeding that will be subject to rehearing and appeal.

Based upon the foregoing, it is hereby

ORDERED, that an adjudicative proceeding is commenced pursuant to N.H. Code Admin. Rules Puc 2505.13 and that the Petitioners and PSNH are parties to that proceeding; and it is

FURTHER ORDERED, that a Prehearing Conference, pursuant to N.H. Admin. Rules Puc 203.15, be held before the Commission located at 21 S. Fruit St., Suite 10, Concord, New Hampshire on November 7, 2008 at 10:00 a.m., at which each party will provide a preliminary statement of its position with regard to the petition and any of the issues set forth in N.H. Admin. Rule Puc 203.15 shall be considered; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.12, PSNH shall notify all persons desiring to be heard at this hearing by publishing a copy of this Order no later than October 31, 2008, in a newspaper with general circulation in those portions of the state in which operations are conducted, publication to be documented by affidavit filed with the Commission on or before November 7, 2008; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.17, any party seeking to intervene in the proceeding shall submit to the Commission seven copies of a Petition to Intervene with copies sent to PSNH and the Office of the Consumer Advocate on or before November 4, 2008, such Petition stating the facts demonstrating how its rights, duties, privileges, immunities or other substantial interest may be affected by the proceeding, as required by N.H. Admin. Rule Puc 203.17 and RSA 541-A:32, I(b); and it is

FURTHER ORDERED, that any party objecting to a Petition to Intervene make said Objection on or before November 7, 2008.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of October, 2008.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary

Individuals needing assistance or auxiliary communication aids due to sensory impairment or other disability, should contact the Americans with Disabilities Act Coordinator, NHPUC, 21 S. Fruit St., Suite 10, Concord, New Hampshire 03301-2429; 603-271-2431; TDD Access: Relay N.H. 1-800-735-2964. Notification of the need for assistance should be made one week prior to the scheduled event.