

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 12-219

**Order Waiving Commission Rule on Class IV Eligibility for
Certain Hydroelectric Generating Facilities**

ORDER NO. 25,394

July 19, 2012

I. PROCEDURAL HISTORY

The New Hampshire Legislature enacted 2012 NH Laws Chapter 272 (RPS Amendments) effective on June 19, 2012. The RPS Amendments modified, among other things, the eligibility requirements for Class IV renewable generators such that a hydroelectric generating facility with a total nameplate capacity of one megawatt (MW) or less will now comply with the Class IV requirements even if it does not have fish passages, so long as the Federal Energy Regulatory Commission has not required such passages, and the facility is interconnected with the New Hampshire electric distribution system.

II. COMMISSION ANALYSIS

N.H. Code of Admin. R. Puc 2502.10, developed upon passage of RSA 362-F in 2007, requires all Class IV renewable facilities to have installed both upstream and downstream diadromous fish passages. The provision of the rule addressing fish passage is in conflict with the 2012 RPS Amendments as to certain hydroelectric generating facilities with capacities of less than one MW. The 2012 RPS Amendments now define a Class IV Existing Small Hydroelectric facility as one that 1) was in operation prior to January 1, 2006, 2) has state water quality certification, as required, and 3) is either a five MW or less facility that has upstream and downstream diadromous fish passages installed *or* is a one MW or less facility that does not have

fish passage restoration requirements, if not required by the Federal Energy Regulatory Commission, and is interconnected with an electric distribution system located in New Hampshire. *See*, RSA 362-F:4, IV(a)(3)(B). Accordingly, pursuant to Puc 201.05, the Commission waives the fish passage requirement in rule Puc 2502.10 for those hydroelectric generating facilities of less than one MW capacity that otherwise comply with all requirements of the RPS Amendments. In reviewing any application for a one MW hydroelectric facility, the 2012 RPS Amendments shall govern.

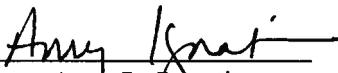
This waiver is granted prospectively in order to comply with the statutory requirements of the RPS Amendments and to allow applicants for Class IV eligibility to receive Commission approval promptly in accordance with the process for application set out in Puc 2505. The Commission finds that this waiver serves the public interest because: (1) it allows Class IV eligible facilities to apply for and qualify for Class IV status promptly; (2) the fish passage requirement for facilities of less than one MW is now inapplicable; and (3) waiver of this rule will enhance the efficient resolution of matters before the Commission. *See* Puc 201.05. This waiver will expire upon a future rulemaking conforming the current rule Puc 2502.10 to the RPS Amendments.

Based upon the foregoing, it is hereby

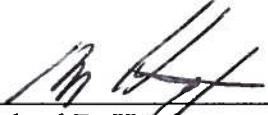
ORDERED, that Puc 2502.10 is waived for certain hydroelectric generation facilities as discussed above; and it is

FURTHER ORDERED, that this waiver shall expire upon adoption of a new rule Puc 2502.10 conforming to 2012 N.H. Laws Chapter 272.

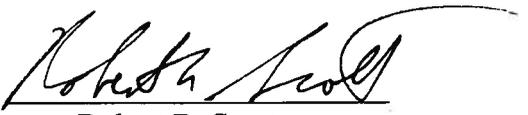
By order of the Public Utilities Commission of New Hampshire this nineteenth day of
July, 2012.



Amy L. Ignatius
Chairman

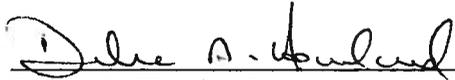


Michael D. Harrington
Commissioner



Robert R. Scott
Commissioner

Attested by:



Debra A. Howland
Executive Director