

STATE OF NEW HAMPSHIRE
BEFORE THE PUBLIC UTILITIES COMMISSION

DE 08-053

PSNH Class IV REC Application for Eight
Existing Small Hydroelectric Facilities

GRANITE STATE HYDROPOWER ASSOCIATION'S
MOTION TO INTERVENE

Granite State Hydropower Association (“GSHA”), whose members include approximately 45 small hydroelectric power projects located throughout New Hampshire, moves to intervene in the above-captioned proceeding, in opposition to the application for Renewable Energy Certificates (“REC’s”) made by Public Service Company of New Hampshire (“PSNH”), saying:

1. Under the Renewable Portfolio Standard (“RPS”) statute, at RSA 362:F:4, IV, and the proposed final administrative rules implementing the statute, at PUC 2502.09, in order to qualify for Class IV REC’s, an existing small hydroelectric “source” must meet four requirements:

- a) It must have begun operation prior to January 1, 2006;
- b) Have a gross nameplate capacity of 5 MW’s or less;
- c) Have installed upstream and downstream diadromous fish passages that have been required and approved under its FERC license or exemption; and
- d) When required, have documented applicable state water quality certification under Section 401 of the Clean Water Act.

2. PSNH's March 28, 2008 "Class IV Renewable Energy Certificate Eligibility Application for Existing Small Hydroelectric Facilities" (the "Filing") seeks Class IV REC certification for eight PSNH small hydro projects: Amoskeag, Ayers Island, Canaan, Eastman Falls, Garvins Falls, Gorham, Hooksett, and Jackman. The Filing raises substantive questions regarding two of the four eligibility criteria for existing hydroelectric facilities seeking Class IV REC's: size (5 MW's or less) and fish passage (upstream and downstream).

3. Based on its review of the information in PSNH's Filing, plus information on PSNH's website, GSHA believes that four of the eight hydroelectric facilities for which PSNH seeks certification in this docket fail to qualify for Class IV REC's because of size, i.e., they have nameplate capacities greater than 5 MW:

<u>Facility Name</u>	<u>Capacity Per Filing</u>	<u>Capacity Per Website</u>
Amoskeag	10 MW	16 MW
Garvins Falls	12.2 MW	12.1 MW
Ayers Island	8.4 MW	8.4 MW
Eastman Falls	6.4 MW	6.4 MW

4. GSHA believes that the RPS statute and the NHPUC's interim and final proposed rules governing certification of Class IV existing small hydroelectric projects require that the total installed nameplate capacity of a "source", i.e. a facility or project (not an individual generating unit within a project) must be no more than 5 megawatts. PSNH's Filing appears to assume that a source or project can qualify so long as each individual generating unit within the project has a nameplate capacity of not more than 5 MW, regardless of the project's total installed capacity. Thus, in PSNH's view, a 20 MW

project could have four (4) turbines, each with an installed capacity of 5 MW, and still qualify as a Class IV facility.

5. The size issue turns on the meaning of the word “source” in RSA 362-F:4, IV, and specifically whether it refers to what is commonly called a “facility” or “project” or “station”, i.e. a single site at which hydroelectric power is produced, or to an individual generating unit within a facility, project, or station. GSHA believes the answer is found in the statutory language and in the legislative history.

6. The language of the statute supports the conclusion that “source” refers to “facility” or “project.” The other three criteria for Class IV certification clearly refer to the entire project, not a single generating unit. One does not speak of a single unit in a multi-unit project beginning operation prior to January 1, 2006, or having installed fish passage facilities, or a Section 401(c) water quality certificate. See also RSA 362-F:2, XV, which defines “source” interchangeably with the term “electrical generating facility.”

7. Attached as Exhibit A is a copy of relevant excerpts from the April 17, 2007 transcript of the legislative hearing of the Senate Committee on Energy, Environment and Economic Development (“the Senate Energy Committee”) on House Bill 873. In that hearing, Ms. Joanne Morin from the Department of Environmental Services stated (p. 10) “...the concept behind it is to incent those hydroelectric facilities that are more at risk of not being able to compete economically because of additional requirements or that they’re just very small, so that the economics are more difficult.” And at p.11 of the hearing transcript, Ms. Morin described the 5 MW size limit as applying to “New Hampshire facilities” and “small hydro projects in New Hampshire”

(emphasis added). In other words, the RPS law and rules are intended to apply to small projects, 5 MW or less, not larger projects that have more than one turbine with a nameplate capacity of 5 MW or less. Incorporated into the legislative record is a letter from GSHA dated April 17, 2007 that clarifies the intent of the Class IV provisions set forth in RSA 362-F:4. The GSHA letter specifically states that the intent of the Class IV language would apply where the “gross nameplate capacity of the project (emphasis added) is 5 MWs or less”. The Connecticut Department of Public Utility Control also addressed the issue of project versus unit size during formulation of eligibility criteria for the Connecticut REC program. Attached as Exhibit B is a copy of the CT DPUC Declaratory Ruling Concerning “Run-Of-The-River Hydropower” Class I and Class II Renewable Energy Source in C.G.S. 16-1(A)(26) & (27), dated September 10, 2004, that addresses that issue and may be of use to the Commission in reviewing this issue.

8. GSHA further believes that seven of the eight facilities named in the PSNH Filing (all but Amoskeag) fail to qualify for Class IV REC’s because, by PSNH’s own admission, they have not installed both upstream and downstream fish passage facilities.

Facility Name	Downstream Passage	Upstream Passage
Ayes Island	Yes	No
Canaan	No	No
Eastman Falls	Yes	No
Garvins Falls	Yes	No
Gorham	No	No
Hooksett	Yes	No
Jackman	No	No

None of the seven projects listed above have installed upstream fish passage facilities, and three (Canaan, Gorham and Jackman) have neither upstream nor downstream fish passageways.

9. With respect to fish passage installation, GSHA believes that PSNH misunderstands the Class IV eligibility requirements. The NHPUC's Class IV interim rules state, in part, that electricity must be produced from a source that "...has installed (emphasis added) 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,...". PSNH seems to believe the words that modify "upstream and downstream diadromous fish passages", i.e. "...that have been required and approved under terms of its license or exemption...", can be read to mean that if FERC does not require fish passage facilities, then a project without fish passage facilities would still qualify for Class IV certification. GSHA contends that a plain reading of the regulations would disqualify PSNH projects that do not have fish facilities installed.

10. GSHA's view is reinforced by a review of the testimony presented in the Senate Energy Committee, which clearly contemplated that Class IV facilities must have incurred the costs to install both upstream and downstream fish passage facilities. Ms. Morin testified (transcript p. 10) that pursuant to HB 873-FN, the small hydro facilities "...that would get this RPS additional incentive would be the ones that actually have fish ladders for wild fish to migrate both up and downstream...". The modifying language was included to address the circumstance where a project owner unilaterally decided to install a fish facility that would not be required by the FERC, solely to receive REC

benefits. In that case, that project would not qualify for Class IV certification. To the best of GSHA's knowledge, the legislature, in formulating the RPS legislation, intended to provide an incentive to small hydroelectric projects that incurred a disproportionate capital and operating expense burden when required to install and operate upstream and downstream fish passage facilities. With the exception of the Amoskeag project, which is ineligible because of its size, GSHA does not believe that the projects for which PSNH seeks Class IV certification in this docket meet that criteria.

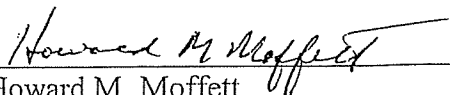
11. Wherefore, GSHA respectfully requests admission as an active intervenor in this docket, and asks the Commission not to grant the Class IV Hydro REC certification sought by PSNH, for the reasons outlined above.

Respectfully submitted,

GRANITE STATE HYDROPOWER ASSOCIATION
By its Attorneys

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was, on this date, sent via first-class mail, postage prepaid, to William H. Smagula, P.E. and Gerald Eaton, Esq., at Public Service Company of New Hampshire, PO Box 330, Manchester, NH 03105-0330.

Date: 5.10.08

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