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STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

December 7, 2010 - 2:11 p.m.
Concord, New Hampshire

RE: DE 10-151
HOLYOKE GAS & ELECTRIC DEPARTMENT:
Application for Certification for
14 REC eligible Facilities.
(Prehearing conference)

PRESENT: Chairman Thomas B. Getz, Presiding
Commissioner Clifton C. Below
Commissioner Amy L. Ignatius

Sandy Deno, Clerk

APPEARANCES: **Reptg. Holyoke Gas & Electric Department:**
Nancy J. Skancke, Esq. (GKRSE Law Office)
Paul Ducheney, Superintendent-Hydro
Jeanette Sypek, Sr. Energy Resources Coord.

Reptg. Granite State Hydropower Assn.:
Rachel A. Goldwasser, Esq. (Orr & Reno)

Reptg. PUC Staff:
Suzanne G. Amidon, Esq.
Jack Ruderman, Dir./Sustainable Energy Div.
Maureen Reno, Sustainable Energy Division

Court Reporter: Steven E. Patnaude, LCR No. 52

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P R O C E E D I N G

CHAIRMAN GETZ: Okay. Good afternoon.

We'll open the prehearing conference in DE 10-151. In terms of procedural background, on June 2nd, 2010, Holyoke Gas & Electric Department filed an application for certification of 14 small hydroelectric facilities as sources eligible to produce Renewable Energy Certificates pursuant to RSA 362-F:4. On July 27, Staff of the Commission filed a memorandum recommending that the application be denied. And, on August 12th, the Commission denied certification. Subsequently, Holyoke Gas & Electric filed a Motion for Reconsideration. And, in an order commencing an adjudicative proceeding that we issued on October 28, we indicated that the Motion for Rehearing would be treated as a petition pursuant to PUC 2505.13, which states that "The Commission shall conduct an adjudicative proceeding...upon petition by an applicant or other party aggrieved by a decision." We also note that a supplemental order of notice was issued on November 17 regarding the publication of notice of this proceeding in the Manchester Union Leader. And, I also note that the affidavits of publication have been filed by the Petitioner.

So, let's take appearances before we

{DE 10-151} [Prehearing conference] {12-07-10}

1 hear positions of parties.

2 MS. SKANCKE: Thank you. My name is
3 Nancy Skancke. I am an attorney with the law offices of
4 GKRSE in Washington, D.C. And, I'm representing the
5 Holyoke Gas & Electric Department. And, with me --

6 MR. DUCHENEY: My name is Paul Duchenezy.
7 I'm the Superintendent of hydro for the Gas & Electric of
8 Holyoke, City of Holyoke.

9 MS. SYPEK: And, I'm Jeanette Sypek.
10 And, I'm the Senior Energy Resources Coordinator for the
11 Holyoke Gas & Electric Company.

12 MS. SKANCKE: And, the gentleman, Brian
13 Beauregard, who is the Superintendent of the Electric
14 Division of the City is not present with us. He was
15 called away on an emergency, so I will be doing a
16 preliminary statement later on his behalf. But he -- so,
17 I don't know if we need to enter his appearance for
18 purposes of the record?

19 CHAIRMAN GETZ: No, that's not
20 necessary. Thank you.

21 MS. SKANCKE: Okay. Thank you.

22 MS. GOLDWASSER: Rachel Goldwasser, from
23 Orr & Reno, here for the Granite State Hydropower
24 Association.

1 CHAIRMAN GETZ: And, you've submitted a
2 Petition to Intervene?

3 MS. GOLDWASSER: We have.

4 CHAIRMAN GETZ: Good afternoon.

5 MS. AMIDON: Good afternoon. Susan
6 Amidon, for Commission Staff. To my left is Jack
7 Ruderman, who is the Director of the Sustainable Energy
8 Division, and to his left is Maureen Reno, an analyst in
9 that division.

10 CHAIRMAN GETZ: Okay. Good afternoon.
11 Well, we have the Petition to Intervene. So, I guess I
12 would say, and I've had an opportunity to take a look at
13 that, I would just say that, Ms. Skancke, when you --
14 after you give, you know, a brief statement about the
15 position of your client, that you also then state any
16 position you have with respect to the Petition to
17 Intervene.

18 MS. SKANCKE: Thank you.

19 CHAIRMAN GETZ: And, then, we'll go
20 around the room.

21 MS. SKANCKE: Okay. Thank you. As I
22 said, my name is Nancy Skancke. And, I'm counsel for the
23 City of Holyoke Gas & Electric Department. Brian
24 Beauregard, the Superintendent, was going to be presenting

1 this preliminary statement, but he was called away on
2 emergency business, and so I will speak in his stead at
3 this point.

4 First, I want to thank you for setting
5 this matter for further consideration as stated in your
6 order of October 28, 2010. We believe that the 14 small
7 hydroelectric facilities listed in our application filed
8 on May 31, 2010, meet the requirements for eligibility for
9 New Hampshire Class IV certification under the Electric
10 Renewable Portfolio Standard law. We welcome the
11 opportunity to talk further with the Commission and its
12 Staff about these hydro facilities so that we can clarify
13 any areas of doubt as to their Class IV qualification.

14 By letter dated August 12, 2010, the
15 Commission's Executive Director affirmed that the
16 Commission had denied HG&E's requested certifications
17 because each of the 14 facilities did not have both
18 upstream and downstream diadromous fish passages. Holyoke
19 does not contest that each of those 14 hydro facilities do
20 not contain such fish passage facilities directly attached
21 to their respective facility; however, HG&E believes that
22 the RPS law did not intend to preclude certification of
23 these 14 facilities where fish passage is being operated
24 in the most efficient way, as recognized by all federal

1 and state resource agencies, that is, at the dam on the
2 river and not in the canal system. HG&E understands that
3 the purpose of the requirement for fish passage in the RPS
4 law is to recognize the efforts and expenditures of those
5 hydro operators that have supported fish migration at
6 existing dams. Consistent with that intent, HG&E has
7 expended millions of dollars in enhancing the fish passage
8 facilities on the river with the goal of providing the
9 most effective upstream and downstream fish passage
10 possible. Such expenditures were the intent of the RPS
11 law and certification of the adjacent hydro projects we
12 believe is appropriate.

13 Initially, I would like to briefly
14 highlight key elements of HG&E's facilities that are
15 relevant to this proceeding and that we believe make this
16 case unique. Then, I would like to outline how those
17 facilities meet the specific language and intent for Class
18 IV certification. During the technical session following
19 this prehearing conference, we intend to discuss those
20 facilities in more detail and will provide additional
21 drawings and pictures as needed and as appropriate in our
22 discussions with the Staff.

23 As a preliminary matter, it is important
24 to outline the components of facilities owned by and

1 operated by HG&E that work in conjunction with the
2 facilities at issue in this proceeding, because the HG&E
3 system is not the typical hydroelectric project. As
4 demonstrated on Figure 3 in the original application, the
5 HG&E system includes the Holyoke Dam on the Connecticut
6 River between the City of Holyoke on one side of the river
7 and the Town of South Hadley on the other side of the
8 river. Adjacent to the dam is HG&E's canal system, which
9 was constructed in the late 1800's. The small hydro
10 facilities at issue in this proceeding are located along
11 that cascading canal system. There are few such canals in
12 the United States, and we believe none in the Northeast,
13 which makes HG&E's application for Class IV certification
14 for these facilities unique.

15 The canal system has three levels, with
16 water entering the canal system by passing through a
17 full-depth louver structure adjacent to the Holyoke Dam.
18 Water moves through the canal system by passing through
19 small hydro generating facilities and overflow structures
20 on the various levels of the canal system, and then
21 ultimately flows back into the river below the Holyoke
22 Dam. As approved by the Federal Energy Regulatory
23 Commission and the Federal and State resource agencies,
24 specifically, the U.S. Department of Interior Fish &

1 Wildlife Service; the U.S. Department of Commerce National
2 Marine Fisheries Service; the Massachusetts Department of
3 Environmental Protection; and the Massachusetts Department
4 of Fish & Game, these facilities have been installed and
5 enhanced at the dam to provide the most efficient and
6 effective fish passage at this point of the Connecticut
7 River. HG&E's goal, as affirmed by the agencies, is to
8 provide for fish to migrate upstream and downstream right
9 at the dam site on the river without having the chance to
10 wander into the canal system and, thereby, being
11 temporarily deflected from their migration.

12 Specifically, during normal flows, fish
13 migrating downstream on the river are attracted (due to
14 the hydraulics of the hydro facility at the dam) to the
15 full-depth louver structure. The louver structure
16 installed by HG&E guides the fish to the louver bypass
17 pipe, which leads the fish back into the river, at the
18 tailrace below the dam. A study conducted by EPRI, in
19 2006, documented 100 percent guidance passage efficiency
20 at that louver facility for juvenile shortnose sturgeon at
21 certain specified flows.

22 To facilitate additional downstream fish
23 passage during higher flows, HG&E regulates flows over the
24 dam (by adjusting the rubber dam segments and by releasing

1 flows through the Bascule Gate, allowing fish to migrate
2 directly into the bypass reach below the Holyoke Dam.

3 For upstream fish passage, fish arriving
4 at the base of the Holyoke Dam move into one of two
5 tailrace fish lift entrances or the spillway fish lift
6 entrance, with the attraction water system distributing
7 flows to the various parts of the fish passage facilities
8 to enhance the ability of the fish to find the fish lift
9 entrances and to navigate. The fish move through the
10 appropriate transport channel (with the assistance of the
11 crowder channel) into the fish lift hopper; and then
12 (after the hopper is raised 40 feet) the fish are released
13 into the exit flume and into the river approximately
14 100 feet above the dam. Fish do not move upstream into
15 the canal system from the river.

16 Additional facilities on both sides of
17 the Holyoke Dam provide additional upstream fish passage
18 specifically for American eels. These facilities include
19 specially designed ramps to enhance the ability of the
20 eels to move over the dam.

21 HG&E also releases specific minimum
22 flows into the bypass reach during fish passage season
23 (when the fish lifts are operating) to enhance the ability
24 of the fish to locate the fish lift entrances. During

1 periods when the fish lifts are not operating, HG&E
2 releases a different specific minimum flow into the bypass
3 reach to enhance fish habitat below the dam.

4 Some of these fish passage facilities
5 were in place when HG&E purchased the various small hydro
6 facilities at issue in this proceeding. However, since
7 its acquisition of these small hydros, HG&E has expended
8 substantial capital on enhancing the fish passage
9 facilities as described in the record. In close
10 coordination with the federal and state resource agencies,
11 the focus of these fish passage enhancements has been at
12 the Holyoke Dam, rather than at the specific sites on the
13 canal at the 14 small hydro projects on the canal at issue
14 here, because facilitating effective fish passage at the
15 dam (directly on the river) provides the best result for
16 the fish and for the resource.

17 The language of the New Hampshire RPS
18 law specifically requires that upstream and downstream
19 fish passage facilities are installed in connection with a
20 hydro facility for which Class IV certification is
21 requested. There is no requirement, in our reading of the
22 law, that the fish passage facilities must be attached to
23 the hydro facility at issue. Clearly, the fish passage
24 facilities at the hydro dam, which are constructed,

1 enhanced, and operated by HG&E, the owner and operator of
2 the 14 facilities at issue here in this proceeding,
3 provide efficient and effective upstream and downstream
4 passage for diadromous fish as contemplated by the RPS
5 law.

6 Further, the language in the RPS law
7 specifically acknowledges that FERC's view of such fish
8 passage facilities is important, requiring that the fish
9 passage facilities be approved by that agency. The
10 existing fish passage facilities at the Holyoke Dam were
11 approved not only by the FERC, but also by, as I stated
12 earlier, two other federal agencies, and at least two
13 state resource agencies. Six of the 14 small hydro
14 facilities at issue in this proceeding are part of the
15 license for the FERC Project 2004, which expressly
16 contains the requirements for the fish passage facilities
17 that HG&E has installed and operates, as I described.
18 When the FERC granted licenses for the remaining eight of
19 the 14 hydros in this -- facilities at issue in this case,
20 it expressly referenced the fish passage facilities
21 installed and operated at the dam under the FERC Project
22 2004 license.

23 With all involved federal
24 agencies/departments and state agencies agreeing that the

1 fish passage facilities at the dam provide adequate and
2 the best protection for fish at the 14 hydro facilities,
3 HG&E believes that the intent and purpose of the RPS law
4 has been met.

5 If the Commission would like to discuss
6 any of these facilities in more detail, I am happy to do
7 so. Otherwise, as I mentioned, we will intend to provide
8 additional information during the technical session. And,
9 we welcome any questions that you may have.

10 CHAIRMAN GETZ: Do you have a position
11 on the Petition to Intervene from the Granite State Hydro
12 Association?

13 MS. SKANCKE: We have no opposition to
14 that intervention.

15 CHAIRMAN GETZ: And, then, one other
16 question I would have, this strikes me this may be a case
17 suitable for a resolution on the papers through a set of
18 stipulated --

19 MS. SKANCKE: Yes.

20 CHAIRMAN GETZ: -- facts, exhibits. Do
21 you have an opinion on whether that's something that could
22 be done in this case?

23 MS. SKANCKE: Yes. We're open to that.
24 And, we've already been discussing with counsel for PUC

1 Staff about that and have talked about a proposed process
2 where we could develop proposed stimulated facts that we
3 would agree with all parties, and then brief the law.

4 CHAIRMAN GETZ: Okay. Thank you.

5 Ms. Goldwasser.

6 MS. GOLDWASSER: So, as I said earlier,
7 I'm Rachel Goldwasser, from Orr & Reno, here on behalf of
8 Granite State Hydropower Association, which includes 45
9 small hydropower facilities throughout the State of New
10 Hampshire. The GSHA participated in development of the
11 RPS Program. Several members are qualified Class IV
12 facilities. And, the outcome of this decision will impact
13 the REC market in New Hampshire and GSHA's members.

14 That said, GSHA is not prepared to take
15 a position at this time on the Holyoke application. But
16 we look forward to participating with the parties and
17 participating in the briefing schedule as one is set.

18 CHAIRMAN GETZ: Okay. Thank you.

19 Ms. Amidon.

20 MS. AMIDON: Thank you, Commissioners.
21 The Staff maintains that the Commission acted
22 appropriately when it denied the certification of the
23 Holyoke facility for the Class III RECs and -- the Class
24 IV, pardon me. And, we think it's consistent with the

1 order that was issued in prior dockets, Order Number
2 24,940, dated February 6, 2009, in Dockets DE 08-053 and
3 DE 08-123 and 124. In that case, even though FERC did not
4 require fish ladders for some of the facilities, the
5 Commission accepted the argument that was advanced, and
6 said "Regardless of whether FERC requires them or not, in
7 order to be eligible for Class IV, you have to have both
8 installed, an upstream and downstream fish passage." And,
9 also in that docket, one of these dockets, the Commission
10 did not allow the aggregation of a number of turbines to
11 -- or, did not allow the separation of a number of
12 turbines to allow the nameplate capacity to be less than
13 5 megawatts, which is the size limitation in the statute.

14 If you aggregate the 14 facilities, I
15 think the gross nameplate capacity is somewhere in the
16 neighborhood of 17 megawatts, which exceeds the size of
17 the small hydro pursuant to the statute. So, we believe
18 that the initial decision of the Commission was correct,
19 and look forward to, you know, the development of this
20 proceeding.

21 (Chairman and Commissioners conferring.)

22 CHAIRMAN GETZ: Well, let me address the
23 Petition to Intervene. And, we'll grant the petition,
24 recognizing that the Granite State Hydropower Association

1 has stated rights, duties, interests that could be
2 effected by this proceeding.

3 And, with that, is there anything else
4 to raise this afternoon?

5 MS. AMIDON: Well, as counsel for
6 Holyoke stated, we had the opportunity to begin some
7 scheduling and propose, as you suggested, that we file
8 first stipulated facts, and then proceed to briefs. And,
9 we see probably the last thing that we need to do is
10 resolve the timing of those things. And, I will be filing
11 a letter with the Commission with our final proposal on
12 how to develop those two issues.

13 CHAIRMAN GETZ: Okay. Then, we will
14 close this hearing and await a recommendation on the
15 procedural schedule for the remainder of the docket.
16 Thank you, everyone.

17 **(Whereupon the prehearing conference**
18 **ended at 2:29 p.m. and a technical**
19 **session was held thereafter.)**