STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DE 08-053

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

DE 08-123 and DE 08-124

FPL ENERGY MAINE HYDRO, LLC

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

Order Consolidating Dockets and Annulling Class IV Source Certification for Certain Hydroelectric Facilities

O R D E R N O. 24,940

February 6, 2009

APPEARANCES: Catherine Shively, Esq. on behalf of Public Service Company of New Hampshire; Orr & Reno by Howard M. Moffett, Esq. on behalf of Granite State Hydropower Association and Ashuelot River Hydro, LLC; and Suzanne G. Amidon, Esq. on behalf of Commission Staff.

I. BACKGROUND

On April 2, 2008, Public Service Company of New Hampshire (PSNH) filed an application requesting certification of eight PSNH owned and operated small hydroelectric facilities to produce Class IV Renewable Energy Certificates (RECs) pursuant to RSA 362-F, the Electric Renewable Portfolio Standard (RPS) Law. The facilities and the towns in which they are located are Garvins Falls (Bow), Ayers Island (Bristol), Eastman Falls (Franklin), Gorham (Gorham), Jackman (Hillsborough), Hooksett (Hooksett), Amoskeag (Manchester), and Canaan (West Stewartstown). In its application, PSNH asserted that all eight hydroelectric facilities meet the requirements to produce Class IV RECs pursuant to RSA 362-F:4, IV, which reads as follows:

> "Class IV (Existing Small Hydroelectric) shall include the production of electricity from hydroelectric energy, providing the source began operation prior to January 1, 2006, has a gross nameplate capacity of 5 MWs or less, has installed 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, and when required, has documented applicable state water quality certification pursuant to section 401 of the Clean Water Act for hydroelectric projects."

On June 27, 2008, Staff filed a memorandum concluding that PSNH's application was incomplete. Staff nevertheless recommended that PSNH's application be denied with respect to the Amoskeag, Ayers Island, Eastman Falls and Garvins Falls facilities because the facilities had a capacity greater than 5 MW. On September 4, 2007, Staff filed a memorandum recommending that the Canaan, Gorham, Hooksett and Jackman facilities be certified. On September 23, 2008, the Commission certified the Gorham, Jackman, Hooksett and Canaan facilities as eligible to produce Class IV RECs pursuant to RSA 362-F:4, IV and denied certification for Garvins Falls, Ayers Island, Eastman Falls and Amoskeag.

In the September 23, 2008 certification letter, the Commission also noted that Granite State Hydropower Association and Ashuelot River Hydro, Inc. (GSHA/Ashuelot) had filed several motions between May and August 2008 that were not contemplated under RSA 362-F:11, which provides for a non-adjudicative certification process, or New Hampshire Code Admin. Rules Puc 2500, the rules implementing the RPS law.[1] GSHA/Ashuelot alleged that the PSNH facilities certified by the Commission are ineligible for Class IV REC certification because the facilities did not have both upstream and downstream fish passages which, GHSA claimed, are required by RSA 362-F:4, IV.

[1] For the procedural history of this docket through October 28, 2008, including GSHA's motions, see Order No. 24,908 (October 28, 2008).

On September 25, 2008, FPL Energy Maine Hydro, LLC (FPL Energy) filed applications requesting Class IV REC certification of two hydroelectric facilities, the North Gorham Project on the Presumpscot River **(**Docket No. DE 08-123) and the Bar Mills Project on the Saco River (Docket No. DE 08-124). GSHA filed objections to the certification of both facilities on October 22, 2008, stating that the two facilities did not meet the requirements to produce Class IV RECs because the facilities did not have both upstream and downstream fish passages. On October 30, 2008, the Commission issued a secretarial letter certifying both the North Gorham Project and the Bar Mills Project as eligible to produce Class IV RECs.

In Docket No. DE 08-053, GSHA/Ashuelot filed a petition on October 3, 2008, pursuant to Puc 2505.13, seeking an adjudicative proceeding regarding the Commission's certification of PSNH's four hydroelectric facilities. With respect to the FPL Energy applications, Dockets No. DE 08-123 and DE 08-124, GSHA/Ashuelot filed a similar petition on December 2, 2008, requesting the Commission conduct an adjudicative proceeding, consolidate the FPL Energy dockets with the PSNH docket, and suspend the Commission's certification with respect to both PSNH's and FPL Energy's small hydroelectric facilities. FPL Energy filed an objection to GSHA/Ashuelot's motion on December 11, 2008.

On October 28, 2008, the Commission issued Order No. 24,908 opening an adjudicative proceeding in Docket No. DE 08-053. Motions to intervene were filed by FPL Energy and N.H. State Representative Suzanne Harvey on November 5, 2008. The Department of Environmental Services (DES) filed comments on November 4, 2008 regarding its interpretation of the fish passage requirements of RSA 362-F:4, IV. A prehearing conference was held on November 7, 2008.

At the prehearing conference, PSNH stated that it disagreed with GSHA/Ashuelot's position regarding the Commission's certification of the Gorham, Canaan, Hooksett and Jackman hydro projects. PSNH said it also disagreed with the Commission's decision to aggregate individual generation unit nameplate capacity at the Amoskeag, Garvins Falls, Eastman Falls and Ayers Island facilities to determine the gross nameplate capacity referenced in RSA 362-F:4, IV. GHSA/Ashuelot said that it disagreed with the Commission's interpretation of the statutory requirement relating to fish passage facilities in RSA 362-F:4, IV and requested that evidence of legislative history of RSA 362-F be introduced in the record. At the conclusion of the prehearing conference, the Commission directed GSHA/Ashuelot, PSNH and Staff to meet in a technical session for purposes of developing, to the extent possible, a stipulation of facts and a procedural schedule.

Following the prehearing conference, Staff filed a proposed procedural schedule, which called for the filing of a stipulation of facts on November 17, 2008 and legal memorandum on November 24, 2008. The proposed procedural schedule was approved by a November 12, 2008 secretarial letter.

On November 17, 2008, GSHA/Ashuelot and PSNH filed stipulated facts. Legal memoranda were filed by PSNH and GSHA/Ashuelot on November 24, 2008. Finally, on December 31, 2008, the Commission stayed the certifications for PSNH's four hydroelectric facilities (Canaan, Gorham, Hooksett and Jackman) and FPL Energy's two hydroelectric facilities (North Gorham and Bar Mills).

On February 5, 2009, GSHA/Ashuelot and PSNH forwarded to the Commission's Executive Director an electronic copy of a proposed settlement of these proceedings, indicating

that they would "endeavor to bring FPL Energy into this settlement." They requested that issuance of an order be delayed until the proposed settlement could be presented to Staff and the Commission.

II. STIPULATED FACTS

PSNH and GSHA/Ashuelot stipulated that, pursuant to RSA 362-F:4, IV and for this proceeding, the relevant characteristics of the eight hydroelectric generating facilities for which PSNH seeks Class IV REC certification are 1) the date the facility began operation, 2) the gross nameplate capacity of the facility, 3) whether upstream and downstream fish passage facilities have been required for the facility under its Federal Energy Regulatory Commission (FERC) license or exemption order, and whether the fish passage facilities have actually been installed at the source in accordance with such order, and 4) whether the source has documented applicable state water quality certification under Section 401 of the Clean Water Act and whether such certification is required.

PSNH and GSHA/Ashuelot attached the following appendices to the stipulated facts: Appendix A, a table containing the relevant characteristics of PSNH's hydroelectric facilities; Appendix B, photographs of the nameplates on the individual generating units at Amoskeag, Eastman and Garvins Falls; Appendix C, a list published by FERC of FERC-licensed or exempted small hydroelectric projects of 5 MW or less in the six New England states; and Appendix D, the transcript and related attachments of an April 17, 2007 legislative hearing before the N.H. Senate Committee on Energy, Environment and Economic Development on House Bill 873, the legislation which became RSA 362-F.

The following is an excerpt of pertinent information from Appendix A to the stipulated facts relevant to PSNH's small hydroelectric facilities.

Facility	Date in Service	Gross Nameplate Capacity (MW)	Station (MW)	Diadromous Fish Passage
Amoskeag G-1[2]	1924	6.0	16.00	Upstream and
Amoskeag G-2	1924	5.0		Downstream
Amoskeag G-3	1922	5.0		
Ayers Island G-1	1924	2.80	8.40	Downstream
Ayers Island G-2	1924	2.80		
Ayers Island G-3	1924	2.80		
Canaan G-1	1927	1.10	1.10	None
Eastman G-1	1937	1.80	6.40	Downstream
Eastman G-2	1983	4.60		
Garvins Falls			12.20	Downstream
G-1	1981	3.30		
G-2	1981	3.30		
G-3	1925	2.40		
G-4	1925	3.20		
Gorham G-1	1917	0.40	2.15	None
Gorham G-2	1917	0.40		
Gorham G-3	1923	0.675		
Gorham G-4	1923	0.675		
Hooksett G-1	1927	1.50	1.50	Downstream
Jackman G-1	1925	3.20	3.20	None

PSNH and GSHA/Ashuelot stipulated that, assuming no significant increase in electricity sales, the market for Class IV New Hampshire RECs in 2009 could be filled by approximately 30 MW of installed and qualifying hydroelectric capacity. They further agreed that that the interpretation of the statutory size requirement (gross nameplate capacity) and the fish passage requirement are critical issues in dispute in the proceeding. Finally, PSNH and GSHA/Ashuelot acknowledged that the transcript of an April 17, 2007 hearing before the Senate Committee on Energy, Environment and Economic Development on House Bill 873, later enacted as RSA 362-

[2] Amoskeag G-1 was not included in the original application by PSNH.

F, together with the exhibits presented at the legislative hearing (Appendix D) are relevant to the issues raised in the instant proceeding.

III. POSITIONS OF THE PARTIES

A. Public Service Company of New Hampshire

PSNH stated that there are two disputes over statutory interpretation in the instant proceeding. The first concerns whether the gross nameplate capacity of five MW or less is interpreted as the sum of the nameplate capacities of all the turbine generators at a hydroelectric generating station or, alternatively, the gross nameplate capacity of individual turbine generator units. The second concerns whether facilities are only required to have those fish passages that have been required and approved by FERC (which would include cases where, for instance, FERC may have required only an upstream fish passage) or, alternatively, facilities in every case must have both upstream and downstream fish passages (and for each facility both the upstream and downstream fish passage must have been required and approved by FERC).

1. Gross Nameplate Capacity of 5 MW or Less

PSNH maintained that the Commission's decision to deny certification of the Garvins Falls, Ayers Island, Eastman Falls and Amoskeag facilities was in error because the decision was based on the aggregation of all generation units' nameplate capacities at those facilities. PSNH Memorandum at 3. PSNH pointed out that individual generators at the Garvins Falls, Ayers Island, Eastman Falls and Amoskeag facilities have nameplate capacities at or below the 5 MW ceiling as evidenced by the nameplate affixed to each individual turbine generator and depicted in Appendix B to the stipulated facts. PSNH asserted that the statutory language clearly intends that each individual turbine generator is intended to be a "source" qualified for certification as a

Class IV source. Id. PSNH said that the Commission cannot infer that the legislature intended to define gross nameplate capacity as the combined capacities of generators at a station. Id. at 4.

According to PSNH, RSA 362-F identifies renewable energy sources according to the manner by which they produce electricity, and the term "source" is not defined. Id. PSNH noted that Class IV sources include existing small hydroelectric production units which began operation prior to January 1, 2006, while Class I sources include generators installed or upgraded after January 1, 2006, referring to Docket No. DE 08-042, *Public Service Company of New Hampshire, Application of Smith Station for Certification as an Eligible Facility*. PSNH noted that the Commission qualified the incremental new production at Smith Station for Class I RECs. Thus, PSNH observed, if two generators at the same station were installed in 1995 and 2006 respectively, one generator could be eligible to produce Class IV RECs while the latter installed generator could be eligible to produce Class I RECs. Id. PSNH also pointed out that Schiller Unit 5, a wood-fired boiler, is considered a Class I source notwithstanding that it is part of a larger generating station producing power from both renewable and non-renewable sources. PSNH asserted that if the statute is taken as a whole, the term "source" cannot be used one way to include a Class I eligible facility (a single unit at a generating station such as Schiller Unit 5) and construed differently to exclude a Class IV facility (the sum of the capacity of separate generators at a single generating station such as Amoskeag). Id.

PSNH concluded by stating that the correct reading of the statute, taken as a whole, is that individual generators at Amoskeag, Ayers Island, Eastman Falls and Garvin Falls which have a gross nameplate capacity of 5 MW or less could be eligible for Class IV certification if they meet all other relevant criteria. Id. at 5.

2. Installation of Upstream and Downstream Diadromous Fish Passages

According to PSNH, the Commission was correct in finding that installation of both upstream and downstream fish passages is not a statutory pre-requisite for Class IV certification. Id. PSNH noted that, had the legislature intended installation as a prerequisite, the statute could have simply read "the source began operation prior to January 1, 2006, has a gross nameplate capacity of 5 MWs or less [and] has installed upstream and downstream diadromous fish passages." Id. PSNH pointed out that the remainder of the current statutory language – "[fish passages] have been required and approved under the terms of its license or exemption from the Federal Energy Regulatory Commission" – would then be superfluous. PSNH opined that the legislature does not include unnecessary language, and maintained that the Commission cannot infer a meaning by disregarding the words in the statute. Id.

PSNH said that it has complied with the regulations and license conditions imposed by FERC by installing fish passages when required under the terms of its FERC licenses. Id. PSNH asserted that few owners of FERC licensed or exempt hydroelectric facilities would build fish passages on their own initiative nor could any facility proceed with the installation of fish passages without FERC approval of a license amendment. Id. PSNH maintained that the only logical interpretation of the statute is that projects must comply with FERC regulation, i.e., the facility must have installed fish passages whenever FERC has ordered and approved the installation. Id. at 6.

According to PSNH, GSHA/Ashuelot point to the legislative dialogue (in Appendix D to the stipulation of agreed facts) between Joanne Morin of DES and a legislator in an attempt to demonstrate that requiring FERC-ordered fish passages under the statute will prevent

hydroelectric project owners from installing sham fish passages (for example, kiddie pool slides) in order to qualify for Class IV certification. PSNH pointed out that because the use of kiddie pool slides as a fish passageway would be considered a violation of the project owner's FERC license, this argument is without merit and, therefore, GSHA/Ashuelot's interpretation of the fish passage language is not reasonable. Id.

PSNH stated that GSHA/Ashuelot will argue that Appendix C stands for the proposition that there are 277 MW of installed hydroelectric capacity throughout New England that could qualify for Class IV RECs as a result of the Commission's ruling in Docket No. DE 08-053. PSNH asserted that GSHA/Ashuelot will claim that the Commission's interpretation will mean that the high number of qualifying facilities will cause the market price for Class IV RECs to be exceedingly low, and that the Legislature would not have intended to create a market that did not produce high prices for Class IV RECs. Id. PSNH pointed out that despite such an assertion by GSHA/Ashuelot, only 10 Class IV projects have been certified or are awaiting review by the Commission as of November 21, 2008. Id. To explain this low number of eligible Class IV projects, PSNH suggested that other eligible facilities may have chosen to qualify for REC status in other states which also have RPS requirements. According to PSNH, because projects cannot sell the same REC in more than one state REC program, these other projects would not have registered in New Hampshire. Absent further inquiry, PSNH said it can only assume that the qualifying hydroelectric projects in other states have, for an unknown reason, chosen not to apply for certification in New Hampshire. Id. at 7

PSNH noted that the stipulation of facts calculates that 30 MW of certified facilities must be in place in order to satisfy the REC requirements for 2009 and questioned whether there are

that many small hydroelectric projects that have installed both upstream and downstream fish passages. Id. PSNH insisted that the statute is clear and unambiguous and that fish passages are not required to be ordered by FERC on every project that applies for Class IV renewable energy certification. According to PSNH, just because there are two different readings of the same statutory language does not mean that the language is ambiguous. PSNH said that each interpretation of statutory language must be reasonable for the Commission to find the language is ambiguous. Id. at 7. PSNH maintained that GSHA/Ashuelot's interpretation of the statutory language is not reasonable because it renders the FERC "ordered and approved" language superfluous. Id. at 8.

B. Granite State Hydropower Association and Ashuelot Hydro

1. Gross Nameplate Capacity of 5 MW or Less

GSHA/Ashuelot maintained that RSA 362-F:4, IV requires that the total installed nameplate capacity of a "source" (i.e., a generating facility, project or station) must be no more than 5 MW. GSHA/Ashuelot Memorandum at 4. According to GSHA/Ashuelot, the size issue turns on the meaning of the word "source" in RSA 362-F:4, IV. GSHA/Ashuelot said that the language of the statute supports the conclusion that "source" refers to "generating facility" or "project" and noted that RSA 362-F:2, XV defines "source" interchangeably with the term "electrical generating facility." Id. GSHA/Ashuelot also noted that the remaining three criteria for Class IV certification refer to an entire project rather than to a single generating unit. Id.

GSHA/Ashuelot cited legislative history to support its contention that the legislature intended to apply the word "source" to small hydroelectric projects of 5 MW or less, and not to larger projects that may have one or more individual generating units with nameplate capacities

of 5 MW or less. Referring to Appendix D to the stipulation of agreed facts, GSHA/Ashuelot opined that the certification for RECs was to apply to hydroelectric facilities that are at a competitive disadvantage due to their small size. Id. at 6. GSHA/Ashuelot concluded by stating that the intent of the Class IV language would apply where the "gross nameplate capacity of the project is 5 MWs or less" consistent with the legislative purpose of RSA 362-F:4, IV. Id.

2. Installation of Upstream and Downstream Diadromous Fish Passages

GSHA/Ashuelot contended that the statutory language regarding fish passages is meant to apply only to small hydroelectric facilities that have been required by FERC to install both upstream and downstream fish passages. According to GSHA/Ashuelot, the phrase in RSA 362-F:4 IV "that have been required and approved under the terms of its license or exemption from [FERC]" is intended to qualify the object of the clause, i.e. "upstream and downstream diadromous fish passages," not to condition the verb "has installed". Id. at 7. GSHA/Ashuelot said that the purpose of the qualifying phrase was to prevent hydro project owners from installing cheap and inadequately designed fish ladders that had not been required and approved by FERC simply in order to qualify for Class IV RECs. Id. at 8.

To support its position, GSHA/Ashuelot referred to the transcript of the hearing before the Senate Energy, Environment and Economic Development Committee which, according to GSHA/Ashuelot, constitutes legislative intent. The transcript, included as Appendix D to the stipulation of agreed facts, notes an exchange between the legislators and DES witnesses Robert Scott and Joanne Morin. In the transcript, Ms. Morin, in response to questions posed by Senator Robert Odell, said that there are some people who believe that hydro power is a positive

renewable energy source whereas there are those who are concerned about the environmental tradeoff in terms of impact to streams, fish ways and fish. Id. at 11.

GSHA/Ashuelot interpreted this testimony as indicating DES' intent to provide an RPS incentive to those small hydroelectric facilities that actually had both upstream and downstream fish passages, especially given the investment in installing those passages. Id. at 7. GSHA/Ashuelot opined that the purpose of the fish passage requirement is to incent and support investment in costly fish passage facilities that have been required by FERC at existing dams in order to meet environmental goals by allowing such hydroelectric facilities to be eligible to produce Class IV RECs. Id. at 12. GHSA/Ashuelot's brief also included exhibits that were not part of the stipulation of agreed facts which, according to GHSA/Ashuelot, indicate that, if PSNH's interpretation were to prevail, pricing for Class IV RECs would be less than one dollar ($1.00). Id. at 13.

IV. COMMISSION ANALYSIS

A. Motion to Consolidate Dockets No. DE 08-053, DE 08-123 and DE 08-124

Pursuant to N.H. Code Admin. Rule Puc 203.19 (a), "When more than one application or petition seeks the same or similar relief, the commission shall consolidate the cases to be heard on a common record if it determines that to do so will promote the orderly and efficient conduct of the proceeding." FPL objected to consolidation on the basis that it could have a prejudicial effect on the status of FPL Energy's hydro facility certification. Nonetheless, FPL Energy intervened in Docket No. 08-053, but declined to participate in the development of stipulated facts or to file a legal memorandum. In the secretarial letters in Dockets No. 08-123 and 08-124 granting conditional certification to FPL Energy's hydro facilities, notice was provided that the

outcome of the proceeding in Docket No. DE 08-053 could affect the certification of FPL Energy's facilities.

The three proceedings involve requests for similar relief and resolution of the proceedings devolves upon a statutory interpretation common among the proceedings. As a result, we conclude that consolidation will promote the orderly and efficient conduct of the proceedings and that FPL will not be prejudiced as a result. Accordingly, based on our authority under Puc 203.19 (a), we grant GSHA/Ashuelot's motion to consolidate DE 08-053, PSNH's application for certification of small hydroelectric facilities for production of Class IV RECs, with FPL Energy's applications for Class IV certification of two small hydroelectric utilities in Dockets No. DE 08-123 and DE 08-124.

B. Gross Nameplate Capacity of 5 MW or Less

The pertinent section of the law at issue with respect to the facility size is as follows:

> "RSA 362-F:4, IV (Existing Small Hydroelectric) shall include the production of electricity from hydroelectric energy, providing the source began operation prior to January 1, 2006, has a gross nameplate capacity of 5 MWs or less, . . ."

PSNH argues that the reference to "gross nameplate capacity" should be applied to the individual components of a hydroelectric facility. It contends the statute does not permit us to consider the total MW capacity of the turbines at a hydroelectric facility. PSNH further notes that the term "source" is not defined in the statute. GSHA/Ashuelot, on the other hand, claims that the language of the statute supports the conclusion that "source" refers to "generating facility" or "project" and is interchangeable with "electrical generating facility." Consequently, they contend that we are required to consider the total MW capacity of a hydroelectric facility. In addition, GSHA/Ashuelot notes that because the remaining three criteria for certification of a

Class IV source refer to characteristics of the entire project rather than to single generating units, our initial interpretation of the size limitations for hydroelectric sources in Docket No. DE 08-053 was correct.

RSA 362-F:2, XV defines "source" in a tautological way as a source of electricity but the provision also uses it in the definition interchangeably with the term "electrical generating facility." In addition, RSA 362-F uses the terms source, facility and generating unit interchangeably throughout the definitions. For instance, the definition of "begun operation" refers to facility, "eligible biomass technologies" refers to generating unit, "historical generation baseline" refers to a hydroelectric facility, and "customer-sited source" refers to source. A logical reading of RSA 362-F in its entirety and RSA 362-F:4, IV in particular leads to the conclusion that "gross nameplate capacity" relates to the total capacity of a hydroelectric facility, i.e., a dam, and not to the capacity of a turbine that is a component part of that facility. Therefore, we determine that the proper interpretation of the nameplate capacity requirement of the statute leads to a denial of eligibility for the Amoskeag, Ayers Island, Eastman Falls and Garvins Falls facilities.

C. Installation of Upstream and Downstream Diadromous Fish Passages

RSA 362-F:4, IV requires that as a condition for small hydroelectric facilities to be eligible for Class IV RECs, the source must have "installed upstream and downstream diadromous fish passages that have been required and approved under the terms of its license or exemption from the [FERC] . . ." PSNH states that the Canaan, Gorham, Hooksett and Jackman facilities qualify for certification, even though these facilities do not have both upstream and downstream diadromous fish passages, because PSNH had installed the fish passages that were

"required" "under the terms" of the applicable FERC license or exemption. In opposition, GSHA/Ashuelot states that only those small hydroelectric facilities that have actually installed both upstream and downstream passages are eligible for Class IV certification.

In certifying the Canaan, Gorham, Hooksett and Jackman facilities in the first instance, we read the statute as establishing a condition that facilities should have done those things that FERC had required of them, which meant that if a facility was only required to have one fish passage, and that fish passage was in place, then that facility was qualified for certification. While this may arguably be a better reading of the statute, we conclude based on the arguments made by GSHA/Ashuelot that the statute is susceptible to more than one reasonable interpretation. We further conclude based on the arguments from PSNH and GSHA/Ashuelot that a definitive interpretation of the disputed provision on its face is affected by misplaced modifiers, superfluous language and misuse of the defining pronoun. As a consequence, we conclude that the statute is confusing and ambiguous.

When faced with a confusing and ambiguous statute, we draw upon New Hampshire case law as a guide to statutory interpretation. "We first interpret legislative intent from the statute as written and will not consider what the legislature might have said or add language that the legislature did not see fit to include." State v. Langill, 157 NH 77, 84 (2008) (citations omitted). "If a statute is ambiguous, however, we consider legislative history to aid our analysis." State v. Whittey, 149 N.H. 463, 467 (2003) (citations omitted). The purpose of this inquiry is to interpret statutes in light of the legislature's intent in enacting them and the policy sought to be advanced by the statute. Id. Therefore, we turn to the legislative record provided as Appendix D to the stipulated facts.

According to the record, DES was instrumental in the bill drafting process for HB 873. *Senate Energy, Environment and Economic Development Hearing* (Hearing) at 1 (April 17, 2007). The testimony at the Hearing, particularly the exchange between Ms. Morin and Senator Odell, illustrates that only hydroelectric facilities with both upstream and downstream fish passages were intended to be eligible to produce Class IV RECs. In response to Senator Odell's question about the fish passage requirement, Ms. Morin testified in part:

> "So what this says is that the ones that would get this RPS additional incentive would be ones that actually have both fish ladders for wild fish to migrate up and downstream." Hearing at 11.

Robert Scott of DES affirmed Ms. Morin's interpretation by adding that: "So the language now allows free flow of fish going both ways, basically." Id. Ms. Morin went on to explain that Class IV eligibility was only to be extended to hydroelectric facilities that have both upstream and downstream fish passages because installation of the passages is "a lot of investment for a small dam. . ." Id.

Upon review of the legislative history, including the fact that the Senate subsequently approved the language that was subject of the Hearing now codified at RSA 362-F:4, IV, we find that only those hydroelectric facilities that have both upstream and downstream fish passage are eligible for certification for Class IV RECs. While the legislation could have been more artfully worded to clearly indicate the Legislature's intent, the transcript of the Hearing serves to resolve the disputed interpretations. Accordingly, we determine that the Canaan, Gorham, Hooksett and Jackman facilities, and the North Gorham and Bar Mills projects, are not eligible for certification as Class IV facilities as a matter of law. Given our legal interpretation, the recently proposed settlement is moot.

Based upon the foregoing, it is hereby

ORDERED, that the Class IV certifications of the Canaan, Gorham, Hooksett and Jackman facilities owned by PSNH and the North Gorham and Bar Mills projects owned by FPL Energy are hereby ANNULLED.

By order of the Public Utilities Commission of New Hampshire this sixth day of February, 2009.

Thomas B. Getz	Graham J. Morrison	Clifton C. Below
Chairman	Commissioner	Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary