

STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

Pinetree Power-Tamworth, Inc.

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Docket No. DE 08-051

MOTION FOR REHEARING

Pursuant to RSA 541:3 and NH Puc 203.07(a) and 203.33, Pinetree Power-Tamworth, Inc. respectfully moves the Commission to reconsider its decision dated July 18, 2008 and to determine that Pinetree Power-Tamworth, Inc.'s generation facility is eligible to produce Class III renewable energy certificates ("RECs") effective May 17, 2008. As a basis for this request, Pinetree Power-Tamworth, Inc. states the following:

I. BACKGROUND FACTS

1. On April 1, 2008, Pinetree Power-Tamworth, Inc. filed an application pursuant to RSA 362-F:11 for conditional certification and designation of its renewable energy generation facility located in Tamworth, New Hampshire as a Class III renewable energy source.
2. On April 2, 2008, Pinetree Power-Tamworth, Inc. provided additional information that Commission staff had previously requested of Pinetree Power-Tamworth's affiliate, Pinetree Power, Inc. in a separate docket (Docket No. 08-024). RSA 362-F:11, I requires the Commission to certify the classification of an existing facility within 45 days of receiving sufficient information to determine that classification. RSA 362-F:11, I. In this case, that date is May 17, 2008.

3. On April 18, 2008, Pinetree Power-Tamworth, Inc. conducted stack tests that indicated that, as of that date, the facility complied with the emissions criteria required of Class III renewable energy sources.

4. On May 17, 2008, the 45-day time period pursuant to which the Commission was required to issue a conditional certification expired, without the issuance of the certification. See RSA 362-F:11, I.

5. On May 30, 2008, the Commission issued a secretarial letter indicating that the facility was conditionally certified as a Class III renewable energy source.

6. By letter dated July 3, 2008, the Department of Environmental Services verified that as of the April 18 stack test, Pinetree Power-Tamworth, Inc. satisfied all of the substantive criteria to be eligible to produce Class III RECs. RSA 632-F:11, III requires the Commission to designate a facility as eligible pursuant to RSA 362-F:6, III within 10 days of verification of the facility's compliance with emissions standards by the Department of Environmental Services. Here, that date is July 13, 2008.

7. On July 18, 2008, the Commission issued a secretarial letter designating the Pinetree Power-Tamworth, Inc. facility a Class III renewable energy source. The Commission's July 18, 2008 secretarial letter stated that the Pinetree Power-Tamworth, Inc. facility was "eligible to produce Class III renewable energy certificates effective July 17, 2008."

II. ARGUMENT

8. Pinetree Power-Tamworth, Inc. respectfully requests that the Commission reconsider its decision that the Pinetree Power-Tamworth, Inc. facility is eligible effective July 17, 2008, because RSA 362-F:11, III permits an eligibility date of May 17, 2008, and an eligibility date of July 17 is inconsistent with providing renewable portfolio standard ("RPS")

benefits to Pinetree Power-Tamworth, Inc. at the same time that Pinetree Power-Tamworth, Inc. provides RPS benefits to the state in the form of renewable generation at lower NO_x emission levels. To be consistent with granting eligibility as of the date New Hampshire first obtained renewable generation at reduced NO_x levels from the Pinetree Power-Tamworth, Inc. facility, the Commission should designate Pinetree Power-Tamworth, Inc. as eligible to produce Class III renewable energy certificates effective May 17, 2008. Such a result is supported by RSA 362-F:11, because this is the date that the Commission should have issued Pinetree Power-Tamworth, Inc.'s conditional certification, and the facility was in compliance with all substantive criteria of Class III on that date. An eligibility date of May 17, 2008 would also fulfill the spirit and intent of New Hampshire's RPS statute.

The Connecticut and Massachusetts RPS programs recognize the concept that RPS benefits for the generator would accrue at the time the state first obtains renewable generation at reduced emission levels under the RPS.

A. Connecticut Practice

9. The Connecticut Department of Public Utility Control ("Connecticut DPUC") granted Pinetree Power-Tamworth, Inc. certification effective April 1, 2008, to coincide with the first quarter in which Pinetree Power-Tamworth, Inc. met Connecticut's RPS emissions requirements. In an order dated June 25, 2008, the Connecticut DPUC designated the Pinetree Power-Tamworth, Inc. facility as eligible to produce Connecticut Class I renewable energy certificates effective the second calendar quarter of 2008 (beginning April 1, 2008). Exhibit 1 at 3, Section IV.A.¹ The consequence of the DPUC's order is that the Pinetree Power-Tamworth,

¹ Please note that there is a typographical error in the title of the attached order. The application and approval was for qualification as a Class I renewable generator not a Class II renewable generator.

Inc. facility is eligible to produce Connecticut Class I RECs as of April 1, 2008, even though the Connecticut DPUC did not designate the facility as eligible until June 25, 2008.

10. The Connecticut DPUC has made similar designations for existing facilities that would qualify for Connecticut Class I RPS generator status, but for the need to retrofit their pollution control equipment. For instance, the Connecticut DPUC designated Greenville Steam Company a Class I renewable source on March 7, 2007, but made its designation effective October 1, 2006 by allowing that facility to submit emission data as late as March 1, 2007 to qualify to sell Connecticut Class I RECs effective the fourth quarter of 2006. Exhibit 2 at 4, Section C.

B. Massachusetts Practice

11. Certifications of RPS generators by the Massachusetts Division of Energy Resources (“DOER”), are effective on the first day that a facility meets all of the substantive eligibility criteria. The DOER process is slightly different from the Connecticut DPUC process in that the DOER issues its certifications before facilities meet all of the substantive criteria. These prior certifications then become effective without further action by DOER once the facilities meet all of the substantive criteria. The DOER’s certification of Ware Cogen and Greenville Steam Company are examples of this policy. The DOER issued a Statement of Qualification for Ware Cogen on June 21, 2004, that listed an expected commercial operation date more than a year in the future, October 1, 2005. Exhibit 3. Likewise, the DOER issued an amended Statement of Qualification for Greenville Steam Company on December 19, 2006 that was contingent upon Greenville Steam Company meeting all eligibility requirements. Exhibit 4 at ¶ 5.

C. Requested Relief

12. The Commission should grant Pinetree Power-Tamworth, Inc. certification effective as of May 17, 2008, the date upon which conditional certification should have been issued and by which Pinetree Power-Tamworth, Inc. satisfied New Hampshire's substantive emission eligibility criteria. RSA 362-F:11 sets forth a procedural mechanism for determining when any type of generator has met the substantive criteria for classification. The statute is silent on the issue of when the certification of a facility is to become effective. Under RSA 362-F:11, I, the Commission must certify a facility within 45 days of receipt of sufficient information to determine the facility's classification. RSA 362-F:11, I. Here, that information was submitted to Commission staff by April 2, 2008. For a biomass facility, the Commission must certify the facility within the 45-day period, conditioned only upon verification by the Department of Environmental Services that the facility meets the applicable emission criteria. RSA 362-F:11, III. Here, that 45-day period ended on May 17, 2008. Within 10 days of receiving verification of eligibility from the Department of Environmental Services, the Commission must "designate the facility as eligible pursuant to RSA 362-F:6, III." The designation clause in RSA 362-F:6, III does not state that eligibility runs from the date of designation.

13. The Commission's secretarial letter presupposes that certification and designation of biomass facilities are the same – that they establish an effective date for the production of RECs. However, it is likely that the legislature used two different words because it intended the two events to have different meanings. The Commission should adopt an eligibility date that treats certification and designation differently, while at the same time treating the different types of facilities and classes equally. Under RSA 362-F:11, all facilities should become eligible upon the coincidence of "certification" and satisfaction of all substantive criteria, whether the

certification is immediate or conditional (based upon future construction or upon stack testing of biomass plants). "Designation" should have a different meaning. Pinetree Power-Tamworth, Inc. believes that "designation" should be treated solely as a procedure to strike the "condition" upon which "conditional" classifications are based. This method of determining an eligibility date is faithful to the spirit and purpose of the RPS statute, which is designed to encourage existing biomass facilities to make large investments in state-of-the-art pollution control technology. Pinetree Power-Tamworth, Inc. made that investment and successfully complied with the RPS emissions requirements as of April 18, 2008, and provided Commission with the necessary information to make a classification by April 2, 2008.

III. CONCLUSION

Based upon the foregoing, Pinetree Power-Tamworth, Inc. respectfully requests that the Commission reconsider its determination dated July 18, 2008 and revise the date of Pinetree Power-Tamworth, Inc.'s eligibility to produce Class III RECs to May 17, 2008.

Respectfully submitted,
Pinetree Power-Tamworth, Inc.,
By its attorneys,

Date: August 7, 2008

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CERTIFICATION OF SERVICE

I hereby certify that I have this day served the foregoing document to the Commission and to the persons identified on the attached Service List in accordance with NH Puc 203.11(c).

Date: August 7, 2008

By: David J. Shulock, Esq. (10597), Esq.

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