THE STATE OF NEW HAMPSHIRE
before the
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

Public Service Company of New Hampshire
Application for Certification of Class IV Small Hydroelectric Facilities.

Docket No. DE 08-053

PUBLIC SERVICE COMPANY'S RESPONSE TO
GRANITE STATE HYDROPOWER ASSOCIATION'S MOTION TO INTERVENE

Public Service Company of New Hampshire ("PSNH" or "the Company") hereby responds to the arguments made by the Granite State Hydropower Association ("GSHA") in its Motion to Intervene ("Motion") filed on May 6, 2007. PSNH has no objection to the request for intervention; however, PSNH respectfully disagrees with the arguments regarding two of the four eligibility criteria for certification as eligible Class IV source (Motion at ¶ 2).

I. Definitions

The statutory definition of a small hydro is as follows:

> RSA 362-F:4, IV. Class IV (Existing Small Hydroelectric) shall include the production of electricity from hydroelectric energy, provided 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.

The definition in the final RPS rules is as follows:

> Puc 2502.10 "Class IV source " means a hydroelectric generation facility that began operation on or before January 1, 2006 and has a gross nameplate capacity of 5 megawatts or less, has installed FERC-required and approved upstream and downstream diadromous fish passages and has obtained all necessary state water quality certifications, to the extent the source is not used to satisfy certificate purchase obligations pursuant to RSA 362-F:4, I(j).

II. What is the meaning of "source"?

Amoskeag Station has three generators, two of which have a gross nameplate capacity of five megawatts. If the Commission were to visit the station today, there would be no nameplate on the building indicating seventeen megawatts. Each separate generator has its own actual nameplate affixed to the machine.[1] These units came into service at different times, but all came into service before January 1, 2006. The generators can be operated independently when one unit is undergoing maintenance or when water flows are not adequate to produce 100 percent of the combined nameplate capacities of all three machines. If the term "facility" was meant to encompass all of the generating units at a particular station, the language of the statute would have been more specific. Construing the term "generating facility" to include all the generators at the facility would effectively preclude Schiller Unit No. 5 from being certified as a Class I Source, a result which was not intended by the legislature

PSNH has separately applied for certification of the biomass-fired Schiller Unit 5 as a Class I Source. The definition of a Class I Source uses the term "generating facility" as does the definition of a Class IV Source. The interim rules provide the following definition of a Class I Source:

> Puc 2502.07 "Class I source" means:
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> (a) A generation facility that began operation after January 1, 2006 and produces electricity from one of the following technologies: wind energy; geothermal energy; hydrogen derived from biomass fuel or methane gas; ocean thermal, wave, current, or tidal energy; methane gas; or biomass, pursuant to RSA 362-F:4, I(a) through (f);

In December 2006, PSNH completed the replacement of the boiler and installation of wood handing facilities to allow the conversion of one generating unit at Schiller Station from coal fired power to wood-firing. It is a biomass facility which began operation after January 1, 2006. Standing alone, Schiller Unit 5 ought to be certified as a Class I Source; however, Schiller Unit 5 is only one of four generating units at Schiller Station.

Two other boilers at Schiller Station, Units #4 and #6, are the same size as Unit #5, but these boilers burn coal to produce electricity. The Schiller combustion turbine

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[1] The Connecticut statute [Conn. Gen. Stats. Annotated § 16-1A (26) and (27)] uses the word "hydropower facility" not "source" and omits the word "nameplate". The word "nameplate" has a technical meaning in the industry and should be accorded such meaning. RSA 21:2.

burns jet fuel. All of these other, fossil-fueled generators at Schiller came on line before January 1, 2006. The entire Schiller Station (the "source", the "generating facility" under GSHA's arguments) produces far more electricity from fossil fuels than from biomass. According to GSHA's interpretation, PSNH's application for certification of the Schiller Unit 5 boiler, converted to biomass after January 1, 2006, ought to be denied because the "source" the "generating facility" burns more fossil fuel than biomass fuel, and most of the generators at Schiller Station began operation prior to January 1, 2006.

This Commission should not "interpret statutory language in a literal manner when such a reading would lead to an absurd result." *Appeal Of James Geekie* & a.___NH _____, *quoting Cayten v. N.H. Dep't of Environmental. Services,* 155 N.H. 647, 653 (2007). April 22, 2008) slip op. at 7. The GSHA's interpretation of a Class IV Source makes no sense, and without any further language in the statute to show otherwise, it makes no sense for the Commission to adopt the same interpretation of "source" for Class IV RECs. Class I RECs were clearly intended to be produced from Schiller Unit 5. Because the two definitions of "source" are nearly identical, there can be no different result for certification of a Class IV Source.

III. How the Commission should proceed.

PSNH is willing to defer consideration of its application with respect to the small hydro Class IV sources except for the Amoskeag Units For the convenience of other applicants, the Commission should decide if each Class IV Source is required to have a FERC order specifically requiring upstream and downstream fish passage and whether the generating facility must have installed those upstream and downstream fish passage ways prior to certification by this Commission. For the two Amoskeag generators discussed herein, the Commission can easily decide that they are both qualified as Class IV Sources. Each of the two Amoskeag generators in PSNH's application is five megawatts or less, and each was put into service before January 1, 2006. Upstream and downstream fish passages have been installed as required and approved by the FERC. The Amoskeag Project (Garvins Falls, Hooksett and Amoskeag Hydro plants) is undergoing FERC re-licensing at this time. In order for the Project to be re-licensed, PSNH must conform with any water quality certifications required by the State of New

Hampshire. PSNH believes that the Amoskeag generators each qualify as a source for producing Class IV N.H. RECs

At a fifty percent capacity level, each generator could produce 21,900 Class IV RECs per year. If PSNH were to pay the alternative compliance payment ($28) instead of producing these RECs at no cost, PSNH customers would have to pay, $1,226, 400 extra to comply with the RPS requirements for Class IV RECs. The RPS requirements add costs to all customers' bills. PSNH's only interest in filing its Class IV application for certification was to minimize those costs to its customers.

Respectfully submitted,

Public Service Company of New Hampshire

July 11 2008
Date

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CERTIFICATE OF SERVICE

I hereby certify that, on the date written below, I caused the attached Response to Granite State Hydropower Association's Motion to Intervene to be served pursuant to N.H. Code Admin. Rule Puc §203.11.

July 11, 2008
Date

Gerald M. Eaton
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