

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 MEMORANDUM

I. Introduction.

The procedural history of this proceeding has been well documented in the September 4, 2008 Memorandum from Henry Bergeron and Stephen Mullen to the Commission ("Sept. 4 Memorandum"). Since that filing the Commission has commenced an adjudicatory proceeding. A Pre-hearing Conference was held on November 7, 2008 at which a procedural schedule was established. Pursuant to that schedule, a Stipulation on Agreed Facts was filed with the Commission on November 17, 2008<sup>1</sup>. Memoranda from Granite State Hydropower Association and Ashuelot River Hydro, Inc. ("GSHA/Ashuelot") and Public Service Company of New Hampshire ("PSNH") are due today.

It is the position of PSNH that the Commission erred in part by aggregating the sum of the nameplate capacities of all the generators at certain PSNH hydroelectric generating stations to determine gross nameplate capacity. PSNH agrees, however, with the Commission's decision regarding its interpretation of the fish passageway requirement under the statute.

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<sup>1</sup> In their cover letter accompanying the Stipulation filed on November 14, 2008, GSHA/Ashuelot attempted to reserve the right to introduce additional facts through affidavits with its Memorandum. PSNH objects to this reservation of rights. Having reviewed the transcript of the procedural hearing, the undersigned attorney for PSNH believes GSHA/Ashuelot's reservation was not preserved on the record or accepted by the Commission. For the reasons set forth in PSNH's memorandum, this is a case of statutory interpretation and no further evidence is necessary for the Commission to decide the two issues in this case.

## II. Standards of Statutory Interpretation.

There are two instances of statutory interpretation which are under dispute in this proceeding: (1) whether the gross nameplate capacity of five megawatts or less is interpreted as the sum of the nameplate capacities of all the turbine generators at the hydroelectric generating station or alternatively the gross nameplate capacity of the individual turbine generator units; and (2) whether the statute requires installation of upstream and downstream fish passages previously ordered and approved by the Federal Energy Regulatory Commission (FERC) as a prerequisite to certification for Class IV Renewable Energy Certificates (RECs). These questions can be resolved directly through the explicit and unambiguous language of the statute itself without having to resort to legislative history for interpretation.

The statute at issue is as follows:

NH 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 New Hampshire Supreme Court has recently reaffirmed the rules it applies to statutory interpretation:

In matters of statutory interpretation, we are the final arbiters of the legislature's intent as expressed in the words of the statute considered as a whole. Tonnerson v. Town of Gilmanton, 156 N.H. 813, 814 (2008). We first look to the language of the statute itself, and, if possible, construe that language according to its plain and ordinary meaning. Id. We 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. Id. We will review legislative history, however, to aid our analysis where the statutory language is ambiguous or subject to more than one reasonable interpretation. Franklin v. Town of Newport, 151 N.H. 508, 510 (2004). We construe all parts of a statute together to effectuate its overall purpose and

avoid an absurd or unjust result. *Id.* Moreover, we do not consider words and phrases in isolation, but rather within the context of the statute as a whole. Grand China v. United Nat'l Ins. Co., 156 N.H. 429, 431 (2007). This enables us to better discern the legislature's intent and to interpret statutory language in light of the policy or purpose sought to be advanced by the statutory scheme. *Id.* *In Re Alexis O.* 2008-NH-1030.362; No. 2008-133. (October 29, 2008 )

PSNH asserts that the language of NH RSA 362-F:4, IV is unambiguous; therefore, there is no reason to look to legislative history or to examine the possibility of an absurd result under the Commission's ruling. PSNH understood that by agreeing to rely on stipulated facts, this proceeding would not offer either party the opportunity for pre-filed testimony, discovery or cross examination. Furthermore, the Commission can discern the meaning of the statutes according to the plain meaning or technical meaning of the words.

### III. Eligible Facility With a Gross Nameplate Capacity of 5 Megawatts or Less.

The certification decision by the Commission was in error because it was based on the aggregation of all the nameplate capacities at certain hydroelectric PSNH generating stations. This aggregation applied to generators at Amoskeag (Units G-2 and G-3), Ayers Island, Eastman Falls and Garvins Falls which have individual generators with nameplate capacities at or below the 5 megawatt ceiling as evidenced by their nameplates. PSNH asserts that the statutory language is clear that each individual turbine generator is intended to be a "source" qualified for certification as a Class IV source. More specifically, the statute calls for "production of electricity from hydro electric energy, provided the source began operation prior to January 1, 2006,[and] has a gross nameplate capacity of 5 MWs or less." See, Stipulation of Agreed Facts, Appendix A. Furthermore, "technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in law, shall be construed and understood according to such peculiar and appropriate meaning." RSA 21:2. Each of the generators has a nameplate, which is a metal label or metal plate affixed to the turbine generator itself. Therefore, the term "nameplate" ought to be construed by the technical

meaning it has in hydroelectric generation, i.e. the physical nameplate affixed to individual generators.

The “gross nameplate capacity” is the total rated output of each individual turbine generator. “There is nothing in the statute to indicate that the word ‘gross’ is not to be given its usual meaning of ‘whole; entire; total; without deduction.’ *First Trust Co. of St. Paul v. Company*, 98 Fed. (2d) 27, 32, and cases cited. *Metropolitan Life Insurance v. Rouillard*, 92 NH 16, 18 (1942). The statute does not state that the sum of the nameplate capacities of the generating units is the gross nameplate capacity. Furthermore, the word “gross” is not synonymous with the word “sum”. Therefore, the Commission cannot infer that the legislature intended to define gross nameplate capacity as the combined capacities of generators at the stations.

Renewable energy sources are classified, *inter alia*, according to the manner of production of electricity. NH RSA 362-F:4. Under this statute describing all the classes of potentially certifiable REC producers, the term “source” is not defined. Class IV sources include “Existing Small Hydroelectric” production which are in operation prior to January 1, 2006, while Class I sources include generators installed or upgraded after January 1, 2006. *See*, DE 08-042 Smith Station - Application for Certification as an Eligible Facility. As shown in Appendix A to the Stipulation of Agreed Facts, PSNH’s hydroelectric generators have come on line during different years. If two generators at the same station were installed in 1995 and 2006, one generator could be eligible to produce Class IV RECs while the latter installed generator could be eligible to produce Class I RECs. The Unit 5 wood fired boiler at Schiller, 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. *See*, Docket DE 08-044. 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) and construed differently to exclude a Class IV facility (the sum of the capacity of separate generators at a single generating station). There is no requirement that the Commission combine all the generators at Schiller Station to become one source, and there is no similar requirement to combine the nameplate capacities of the hydroelectric generators located at a particular hydroelectric station.

This dilemma is not resolved by focusing on ISO New England Asset numbers, for there is no consistency in the way that numbers are assigned. For example, Schiller Unit 5

has its own ISO New England Asset number. *See*, Docket DE 08-042. The separate facilities of Hooksett Station and Garvins Falls Station share the same ISO New England Asset number. Appendix A. Using the application of an ISO number to determine if a facility could be certified as a Class IV facility is meaningless, especially in light of the Commission's finding that Hooksett Station was found eligible for certification as a Class IV hydroelectric facility, but Garvins Falls Station was not.

The correct reading of the statute, taken as a whole, is that individual generators at Amoskeag (Units G-2 and G-3), Ayers Island, Eastman Falls and Garvins Falls which have a gross nameplate capacity of 5 megawatts or less could be eligible for Class IV certification if they meet all other relevant criteria.

#### IV. Installation of Upstream and Downstream Diadromous Fish Passages

The Commission was correct in finding that installation of upstream and downstream fish passages is not a statutory pre-requisite for Class IV certification. Had installation been 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." The remainder of the current statutory language would therefore be superfluous: "[fish passages] have been required and approved under the terms of its license or exemption from the Federal Energy Regulatory Commission." The legislature does not include unnecessary language. The Commission cannot infer a meaning by disregarding words within the statute.

PSNH has complied with the regulations and license conditions imposed by FERC by installing fish passages. PSNH "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." RSA 362-F:4 IV; Appendix A, Column 5. The Commission Staff confirmed this fact after careful review of PSNH's licenses as described in the Sept. 4 Memo.

Few owners of FERC licensed or exempt hydro 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. Therefore the

only logical interpretation of the statute is that projects must comply with FERC regulation, i.e. they must have installed fish passages whenever FERC has ordered and approved the installation. GSHA/Ashuelot will point to the legislative dialogue in Appendix D to the Stipulation on Agreed Facts between Ms. Morin of DES and a legislator in an attempt to demonstrate that requiring FERC ordered fish passages under the statute will prevent hydro project owners from installing sham fish passages (e.g. kiddie pool slides) in order to qualify for Class IV certification. However, since utilization of unapproved kiddie pool slides as a fish passageway would be considered a violation of the project owner's license, this argument is without merit. Therefore, GSHA/Ashuelot's interpretation of the fish passage language is not reasonable.

GSHA/Ashuelot will argue that Appendix C stands for the proposition that there are 277 megawatts of installed hydroelectric generation capacity throughout New England that could qualify for Class IV RECs as a result of the Commission's ruling. In essence, GSHA/Ashuelot will argue that the Commission's interpretation of the statute will mean that the high number of participants will cause the market price to be exceedingly low. The argument will be that the legislature would not have intended to create a market that did not produce high prices for Class IV RECs. In spite of this assertion, few applications have been filed for Class IV status even this late in the 2009 compliance year. PSNH asks the Commission to take administrative notice that as of November 21, 2008 the number of projects that have received certification as a Class IV source or are awaiting review is only ten. RSA 541-A:33, V (b). *See*, Exhibit 1 attached to this Memorandum. If one accepts the view of GSHA/Ashuelot, more projects would have made application thereby impacting the market price. The question remains why haven't more hydro projects applied out of such a large class? The answer may lie in the fact that there are other REC sales opportunities for these same hydroelectric facilities in Rhode

Island which are mutually exclusive from those in New Hampshire.<sup>2</sup> Projects cannot sell the same REC in more than one state program. NH RSA 362-F:7,I. Two percent of the requirements of the Renewable Energy Standard in Rhode Island can be met with existing Renewable Resources. *See*, Exhibit 2. Projects cannot sell the same REC in more than one state REC program. The projects listed in Appendix C may also qualify as Existing Resources in Rhode Island. PSNH has not determined if these same plants in Appendix C qualify for REC production under renewable portfolio standards in the other New England states.

Given an opportunity for discovery, research and submittal of evidence, PSNH would have explored what the opportunities are for selling RECs in New England and also how many projects of five megawatts or less had installed FERC-approved upstream and downstream fish passages. As such, PSNH has not determined if the plants in Appendix C qualify for REC production under renewable portfolio standards in New England states other than New Hampshire and Rhode Island.

The pool of potential participants under GSHA/Ashuelot's definition, i.e. five megawatts of capacity with upstream and downstream fish passages already installed, may be so small that energy service providers would always be paying the alternative compliance payment of \$28 per megawatt-hour and rarely purchasing Class IV RECs from producers. The Stipulation on Agreed Facts calculates that 30 megawatts of certified facilities must be in place in order to satisfy the REC requirement for 2009. Are there that many small hydroelectric projects that have installed both upstream and downstream fish passages? It is equally possible that GSHA/ Ashuelot's interpretation of this statutory definition may lead to an absurd result.

The statute is clear and unambiguous. Fish passages are not required to be ordered by FERC on every project that applies for Class IV renewable Energy certification. Simply because there are two different readings of the same phrase

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<sup>2</sup> Two percent of the requirements of the Renewable Energy Standard in Rhode Island can be met with existing Renewable Resources. *See*, RI Renewable Energy Standard Regulations, attached as Exhibit 2. Please take administrative notice of the Rhode Island standard under RSA 541-A:33 V (d).

does not make the language ambiguous. Each interpretation of statutory language must be reasonable for the Commission to find the language ambiguous. The position of GSHA/Ashuelot's is not reasonable because their interpretation renders the FERC ordered and approved language superfluous.

Respectfully submitted,  
Public Service Company of New Hampshire

Nov 24 2008

Date

By: Gerald M. Eaton

Gerald M. Eaton

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#### CERTIFICATE OF SERVICE

I hereby certify that, on the date written below, I caused the attached Motion for Protective Order to be served pursuant to N.H. Code Admin. Rule Puc §203.11.

November 24 2008

Date

Gerald M. Eaton

Gerald M. Eaton





"Bergeron, Henry"  
<Henry.Bergeron@puc.nh.gov>  
v>

To "Bergeron, Henry" <Henry.Bergeron@puc.nh.gov>  
cc  
bcc  
Subject EFs

## EXHIBIT 1

11/21/2008 02:38 PM

The list as of 11/21/08. One new facility's application received, and 2 approved.

<<Certified Facilities, List of eff 11.21.08.xls>>

### ***Henry J. Bergeron***

New Hampshire Public Utilities Commission  
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Certified Facilities, List of eff 11.21.08.xls

# FACILITIES CERTIFIED TO PRODUCE RENEWABLE ENERGY CREDITS (RECs)

Class I	Facility Information	Contact Person	ISO-NE Asset ID #	Status	Effective Date to Produce RECs	NH Certification Code #
	<b>Beaver Ridge Wind</b> Freedom, ME Capacity: 4.5 MW Wind	Richard Silkman Beaver Ridge Wind, LLC 148 Middle St, Suite 506 Portland, ME 04101 Phone: 207-772-6190 Email: rsilkman@energymaine.com	15706	Approved 10/21/2008	September 2, 2008	NH-I-08-014
	<b>Chaffee Landfill</b> 10860 Olean Rd Chaffee, NY 14030 Capacity: 4.8 MW Landfill Methane Gas	LaToya Glenn WM Renewable Energy, L.L.C. Contract Administrator 1001 Fannin, Suite 4000 Houston, TX 77002 Phone: 713-328-7357 Email: lglenn@wm.com	32644	Under Review		
▶	<b>Granby LFG</b> 11 New Ludlow Rd Granby, MA 01033 Capacity: 3.2 MW Landfill Gas	Sandra Gillis Business Manager Industrial Power Services Corp PO Box 840 Ware, MA 01082 Phone: 413-967-7415 Email: ips1@verizon.net	1572	Under Review		
	<b>Lempster Wind LLC</b> 106 Bean Mountain Rd PO Box 231 Lempster, NH 03605 Capacity: 24.0 MW Wind	Peter Toomey Manager, Environmental Markets Iberdrola Renewables, Inc. 1115 Broadway, 12th Floor New York City, NY 10010 Phone: 215-266-4529	15115	Approved 9/23/2008	August 29, 2008	NH-I-08-012

# FACILITIES CERTIFIED TO PRODUCE RENEWABLE ENERGY CREDITS (RECs)

Facility Information	Contact Person	ISO-NE Asset ID #	Status	Effective Date to Produce RECs	NH Certification Code #
	Email: ptoomey@iberdrolausa.com				
<b>Mill Seat Landfill</b>	LaToya Glenn	32645	Under Review		
303 Brew Rd	WM Renewable Energy, L.L.C.				
Bergen, NY 14416	Contract Administrator				
Capacity: 4.8 MW	1001 Fannin, Suite 4000				
Landfill Methane Gas	Houston, TX 77002				
	Phone: 713-328-7357				
	Email: lglen@wm.com				
<b>Salonia, James</b>	Salonia, James		Under Review		
794 Reed Rd	794 Reed Rd				
Colebrook, NH 03576	Colebrook, NH 03576				
Capacity: .0019 MW	Phone: 603-237-8603				
Wind	Email:				
<b>Schiller Station # 5</b>	William H. Smagula	557	Approved	July 28, 2008	NH-I-08-006
400 Gosling Rd	Director, PSNH Generation				
Portsmouth, NH 03801	Public Service Company of New Hampshire				
Capacity: 50.0 MW	PO Box 330				
Biomass	Manchester, NH 03105-0330				
	Phone: 603-669-4000				
	Email: smaguwh@psnh.com				
<b>Smith Hydro, J. Brodie</b>	William H. Smagula	570	Approved	July 29, 2008	NH-I-08-011
99 Glen Ave	Director, PSNH Generation				
Berlin, NH 03570	Public Service Company of New Hampshire				
Capacity: 17.6 MW	PO Box 330				
Hydroelectric	Manchester, NH 03105-0330				
	Phone: 603-669-4000				
	Email: smaguwh@psnh.com				

# FACILITIES CERTIFIED TO PRODUCE RENEWABLE ENERGY CREDITS (RECs)

Facility Information	Contact Person	ISO-NE Asset ID #	Status	Effective Date to Produce RECs	NH Certification Code #
<b>UNH CHP Plant</b> 22 Colovos Rd Durham, NH 03284-3515 Capacity: 7.9 MW Landfill Methane Gas	Matt O'Keefe University System of New Hampshire Energy Office 17 Leavitt Lane Durham, NH 03824 Phone: 603-862-1276 Email: mattokeefe@unh.edu		Under Review		
<b>UNH Power Plant</b> 22 Colovos Rd Durham, NH 03284-3515 Capacity: 4.6 MW Landfill Methane Gas	Matt O'Keefe University System of New Hampshire Energy Office 17 Leavitt Lane Durham, NH 03824 Phone: 603-862-1276 Email: mattokeefe@unh.edu	1529	Under Review		
<b>Class II</b>					
<b>Brockton-Brightfield</b> Grove and East Union St Brockton, MA 02301 Capacity: .46 MW Solar PV	Michael Thoreson, Commissioner Department of Public Works, City of Brockton 45 School St Brockton, MA 02301 Phone: 508-580-7135 Email: mthoreson@ci.brockton.ma.us	11925	Approved 4/9/2008	March 6, 2008	NH-II-08-002
<b>Haven, John</b> 87 Marvin Rd Moultonborough, NH 03254 Capacity: .0018 MW Solar PV	Haven, John 87 Marvin Rd Moultonborough, NH 03254 Phone: 603-253-7446 Email:		Under Review		

# FACILITIES CERTIFIED TO PRODUCE RENEWABLE ENERGY CREDITS (RECs)

	Facility Information	Contact Person	ISO-NE Asset ID #	Status	Effective Date to Produce RECs	NH Certification Code #
▶	<b>Lee Company, The</b> 2 Pettipaug Rd Westbrook, CT 06498 Capacity: .308 MW Solar PV	Leighton Lee IV Lee Company, The 2 Pettipaug Rd Westbrook, CT 06498 Phone: 860-399-6281 Email: sranade@evomarkets.com		Approved 11/19/2008	October 16, 2008	NH-II-08-017
▶	<b>Thule Corporation</b> 42 Silvermine Rd Seymour, CT 06483 Capacity: .318 MW Solar PV	Laura Stern Nautilus Energy 380 Main St., #23 Chatham, NJ 07928 Phone: Email: laura@nautilusenergy.com		Approved 11/4/08	October 21, 2008	NH-II-08-018
<b>Class III</b>						
	<b>Johnston Landfill</b> 65 Shun Pike Johnston, RI Capacity: 16.2 MW Methane	William P. Short III Vice President of Power Marketing Ridgewood Power Management 947 Linwood Avenue Ridgewood, NJ 07450 Phone: 201-447-9000 Email: bshort@ridgewoodpower.com		Under Review		
	<b>Pinetree Power, Inc.</b> 1241 Whitefield Rd Bethlehem, NH 03574 Capacity: 17.1 MW Biomass	David J. Shulock, Esq. Brown, Olson & Gould, PC 2 Delta Dr, Suite 301 Concord, NH 03301 Phone: 603-225-9716 Email: dshulock@bowlaw.com	337	Approved 6/19/08	June 9, 2008	NH-III-08-004

# FACILITIES CERTIFIED TO PRODUCE RENEWABLE ENERGY CREDITS (RECs)

Facility Information	Contact Person	ISO-NE Asset ID #	Status	Effective Date to Produce RECs	NH Certification Code #
<b>Pinetree Power-Tamworth, Inc.</b> 469 Plains Rd Tamworth, NH 03886 Capacity: 23.8 MW Biomass	David J. Shulock, Esq. Brown, Olson & Gould, PC 2 Delta Dr, Suite 301 Concord, NH 03301 Phone: 603-225-9716 Email: dshulock@bowlaw.com	592	Approved 7/18/08	July 8, 2008	NH-III-08-005
<b>Class IV</b>					
<b>A &amp; D Hydro, Inc.</b> One Front St W. Springfield, MA 01089-3113 Capacity: 1.2 MW Hydroelectric	Thomas Tarpey, VP A & D Hydro, Inc. 55 Union St, 4th Floor Boston, MA 02108 Phone: 617-367-0032 Email: tarpey@massgravity.com	10770	Approved 5/20/08	May 3, 2008	NH-IV-08-003
<b>Avery Hydro LLC</b> 26 Mill Lane Laconia, NH 03246 Capacity: 479 MW Hydroelectric	Richard D. Ely, Principal Avery Hydro, LLC 27264 Meadowbrook Drive Davis, CA 95618 Phone: 530-753-8864 Email: dick@davishydro.com		Under Review		
<b>Bar Mills Project</b> Buxton, ME 04093 Capacity: 4.0 MW Hydroelectric	F. Allen Wiley FPL Energy Maine Hydro LLC 160 Capitol St., Suite 8 Augusta, ME 04330 Phone: 207-623-8413 Email: alwiley@fpl.com	754	Approved 10/30/2008	September 25, 2008	NH-IV-08-016

# FACILITIES CERTIFIED TO PRODUCE RENEWABLE ENERGY CREDITS (RECs)

Facility Information	Contact Person	ISO-NE Asset ID #	Status	Effective Date to Produce RECs	NH Certification Code #
<b>Benton Falls</b> 1215 Clinton Ave Benton, ME 04901 Capacity: 4.468 MW Hydroelectric	Richard A. Norman c/o Essex Hydro Associates, LLC 55 Union St., 4th Floor Boston, MA 02108 Phone: 617-367-0032 Email: ran@essexhydro.com	2280	Approved 2/14/2008	January 1, 2008	NH-IV-08-001
<b>Canaan G-1</b> 344 Powerhouse Rd Canaan, VT 05903 Capacity: 1.1 MW Hydroelectric	William H. Smagula Director, PSNH Generation Public Service Company of New Hampshire PO Box 330 Manchester, NH 03105-0330 Phone: 603-669-4000 Email: smaguwh@psnh.com	861	Approved 9/23/2008	August 27, 2008	NH-IV-08-007
<b>Cochecho Falls Hydro</b> 100 Main St. Dover, NH 03820 Capacity: .75 MW Hydroelectric	John N. Webster General Partner Cochecho Falls Associates PO Box 178 S. Berwick, ME 03908 Phone: 207-384-2349 Email:	886	Approved 9/29/2008	August 22, 2008	NH-IV-08-013
<b>Gorham G-1, G-2, G-3, G-4</b> 1 Station Rd Gorham, NH 03581 Capacity: 2.15 MW Hydroelectric	William H. Smagula Director, PSNH Generation Public Service Company of New Hampshire PO Box 330 Manchester, NH 03105-0330 Phone: 603-669-4000 Email: smaguwh@psnh.com	427	Approved 9/23/2008	August 27, 2008	NH-IV-08-008

# FACILITIES CERTIFIED TO PRODUCE RENEWABLE ENERGY CREDITS (RECs)

Facility Information	Contact Person	ISO-NE Asset ID #	Status	Effective Date to Produce RECs	NH Certification Code #
<b>Hooksett G-1</b> 73 Merrimack St Hooksett, NH 03106 Capacity: 1.6 MW Hydroelectric	William H. Smagula Director, PSNH Generation Public Service Company of New Hampshire PO Box 330 Manchester, NH 03105-0330 Phone: 603-669-4000 Email: smaguwh@psnh.com	768	Approved 9/23/2008	August 27, 2008	NH-IV-08-009
<b>Jackman G-1</b> 8 Sawmill Rd Hillsborough, NH 03244 Capacity: 3.2 MW Hydroelectric	William H. Smagula Director, PSNH Generation Public Service Company of New Hampshire PO Box 330 Manchester, NH 03105-0330 Phone: 603-669-4000 Email: smaguwh@psnh.com	449	Approved 9/23/2008	August 27, 2008	NH-IV-08-010
<b>North Gorham Project</b> Gorham, ME 04038 Capacity: 2.25 MW Hydroelectric	F. Allen Wiley FPL Energy Maine Hydro LLC 160 Capitol St., Suite 8 Augusta, ME 04330 Phone: 207-623-8413 Email: alwiley@fpl.com	760	Approved 10/30/2008	September 25, 2008	NH-IV-08-015



**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
PUBLIC UTILITIES COMMISSION**

**RULES AND REGULATIONS GOVERNING  
THE IMPLEMENTATION OF A RENEWABLE ENERGY STANDARD**

Date of Public Notice: January 9, 2007 and April 3, 2007  
Date of Public Hearing: February 8, 2007 and April 16, 2007  
Effective Date: July 25, 2007

**RECEIVED**

JUL 05 2007

*kw*  
RI SECRETARY OF STATE  
ADMINISTRATIVE RECORDS

- 3.6 Electrical Energy Product: means an electrical energy offering, including but not limited to last resort and standard offer service, or any successor service, that can be distinguished by its Generation Attributes or other characteristics, and that is offered for sale by an Obligated Entity to End-use Customers.
- 3.7 Eligible Biomass Fuel: means fuel sources including brush, stumps, lumber ends and trimmings, wood pallets, bark, wood chips, shavings, slash, yard trimmings, site clearing waste, wood packaging, and other clean wood that is not mixed with other unsorted solid wastes; agricultural waste, food and vegetative material; energy crops; landfill methane or biogas, provided that such gas is collected and conveyed directly to the Generation Unit without use of facilities used as common carriers of natural gas; or neat bio-diesel and other neat liquid fuels that are derived from such fuel sources.
- Generation Units using wood sources other than those listed above may make application, as part of the required fuel source plan described in Section 6.9, for the Commission to approve a particular wood source as "clean wood." The burden will be on the applicant to demonstrate that the wood source is at least as clean as those listed in the legislation. Wood sources containing resins, glues, laminates, paints, preservatives, or other treatments that would combust or off-gas, or mixed with any other material that would burn, melt, or create other residue aside from wood ash, will not be approved as clean wood.
- 3.8 Eligible Renewable Energy Resource: means a resource as defined in Section 5.0 of these regulations.
- 3.9 End-use Customer: means a person or entity in Rhode Island that purchases electrical energy at retail from an Obligated Entity except that a Generating Unit, taking station service at wholesale from ISO or self-supplying from its other generating stations, shall not be considered an End-use Customer.
- 3.10 Existing Renewable Energy Resources: means Generation Units using Eligible Renewable Energy Resources and first entering commercial operation before December 31, 1997.
- 3.11 FERC: means the Federal Energy Regulatory Commission, or its successor.
- 3.12 Generation Attributes: means the non-price characteristics of the electrical energy output of a generation unit including, but not limited to, the unit's location, fuel type, actual emissions, vintage and policy eligibility. The Commission may modify this list as appropriate.
- 3.13 Generation Unit: means a facility that converts a fuel or an energy resource into electrical energy.
- 3.14 Historical Generation Baseline: means, for all Eligible Renewable Energy Resources including Intermittent Resources, the average annual electrical production from the Eligible Renewable Energy Resources, stated in megawatt-hours (MWhs), for the three calendar years 1995 through 1997, or for the first 36 months after the Commercial Operation Date if that date is after December 31, 1994 (the "Baseline Period"); provided however, that the Historical Generation Baseline shall be measured regardless of whether or not the average annual electrical production during the Baseline Period meets the eligibility requirements of Section 5 of these regulations.

data (or any part thereof) is not automatically included in the ISO Market Settlement System; and (ii) meets the requirements of a Verifier under Section 6.8. A Verifier may be the local electric distribution company, provided all qualifications contained in Section 6.8 (ii) and 6.8(iii)(b), (c), (e), and (g) are met.

#### **4.0: Renewable Energy Standard**

4.1 Starting in Compliance Year 2007, all Obligated Entities shall obtain, from Eligible Renewable Energy Resources, a target percentage of at least three percent (3%) of electricity sold by an Obligated Entity at retail to Rhode Island End-use Customers, inclusive of losses. For the purposes of this section, electricity sold by an Obligated Entity at retail to Rhode Island End-use Customers shall equal the sum of the Real Time Load Obligations for each Load Asset in the New England Markets that represents the electricity sold by an Obligated Entity at retail to Rhode Island End-use Customers. In each subsequent Compliance Year through Compliance Year 2019, the target percentage shall increase according to the table in Section 4.2 below, except as provided in Section 4.4.

4.2 For each Obligated Entity and in each Compliance Year, the amount of retail electricity sales used to meet this obligation that is derived from Existing Renewable Energy Resources shall not exceed two percent (2%) of total retail electricity sales.

Compliance Year	Total Target Percentage	Percentage from New Renewable Energy Resources	Percentage from <i>either New or Existing Renewable Energy Resources</i>
2007	3.0%	1.0%	2.0%
2008	3.5%	1.5%	2.0%
2009	4.0%	2.0%	2.0%
2010	4.5%	2.5%	2.0%
2011 <sup>[1]</sup>	5.5%	3.5%	2.0%
2012 <sup>[1]</sup>	6.5%	4.5%	2.0%
2013 <sup>[1]</sup>	7.5%	5.5%	2.0%
2014 <sup>[1]</sup>	8.5%	6.5%	2.0%
2015 <sup>[1]</sup>	10.0%	8.0%	2.0%
2016 <sup>[1]</sup>	11.5%	9.5%	2.0%
2017 <sup>[1]</sup>	13.0%	11.0%	2.0%
2018 <sup>[1]</sup>	14.5%	12.5%	2.0%
2019 <sup>[1]</sup>	16.0%	14.0%	2.0%
2020 and thereafter <sup>[2]</sup>	16.0%	14.0%	2.0%

[1] Increases in 2011 and thereafter subject to Commission determination pursuant to Section 4.4.

[2] Duration of continuation subject to Commission determination pursuant to Section 4.5.

4.3 If an Obligated Entity represents to a customer that the Obligated Entity is selling to the customer a portfolio of supply sources that includes more than the amount of Eligible



State of Rhode Island and Providence Plantations  
A. Ralph Mollis  
Secretary of State

Rules and Regulations Filing Form

**1. Name and Address of Agency**

Public Utilities Commission 89 Jefferson Blvd.

**2. Title of Rule**

Rules and Regulations Governing the Implementation of a Renewable Energy Standard

**3. Statutory Source of Authority to Issue These Rules**

R.I.G.L. 39-26 et seq. and 42-35 et seq.

**4. Concise Explanatory Statement - §42-35-2.3**

To implement and facilitate the development of a Renewable Energy Standard in compliance with RIGL 39-26-1 et seq.

**5. Type of Filing**

A1. Emergency 120-day initial - §42-35-3(b)

☐ Adoption

☐ Amendment of ERLID:

☐ Repeal of ERLID:

A2. Emergency 90-day renewal - §42-35-3(b)

☐ Adoption

☐ Amendment

Indicate ERLID of 120-day initial:

Brief Statement of Reason for Finding Imminent Peril §42-35-3(b)(2):

☒ B1. Amendment - §42-35-3(a)

☐ B2. Adoption - §42-35-3(a)

☐ B3. Repeal - §42-35-3(a)

☐ C. Technical Revision

☐ D. Refile - §42-35-4.1

Supersedes ERLID: 3800

Repeals ERLID:

Expires ERLID: 0

Refiles ERLID:

If B1 or C, please indicate new, amended, or revised sections; if D, please indicate date of filing prior to refile:  
Sections 3.0 and 6.8

**6. Notice and Hearing**

Date of Public Notice - §42-35-3(a)(1): 01/09/2007

Date of Public Hearing - §42-35-3(a)(2): 02/08/2007

**7. Agency Use**

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ADMINISTRATIVE RECORDS

**8. Certification**

I hereby certify that the attached rules and regulations were adopted in accordance with the Administrative Procedures Act (42-35) and that they are true copies of this Department, attest,

Name: Luz E. Messaro

Title: Commission Clerk

Patricia J. Lucarelli  
Notary Public

My Commission Expires 1/17/10

Subscribed and sworn before me this 5<sup>th</sup> day of July, 2007

ERLID#: 4694