

STATE OF NEW HAMPSHIRE
BEFORE THE PUBLIC UTILITIES COMMISSION

DOCKET NO. DE 08-123

FPL Energy Maine Hydro LLC – North Gorham Project Hydro Facility

And

DOCKET NO. DE 08-124

FPL Energy Maine Hydro LLC – Bar Mills project Hydro Facility

Applications for Class IV Renewable Energy Certificate Eligibility

OBJECTION OF FPL ENERGY MAINE HYDRO LLC
TO THE PETITION OF GRANITE STATE HYDROPOWER ASSOCIATION
AND ASHUELOT RIVER HYDRO, INC. FOR ADJUDICATIVE PROCEEDING,
MOTION OFR CONSOLIDATION WITH DOCKET DE 08-153
AND MOTION TO SUSPEND DECISIONS

FPL Energy Maine Hydro LLC (“FPL Energy”) respectfully submits this objection to the Petition of Granite State Hydropower Association (“GSHA”) and Ashuelot River Hydro, Inc. (“ARH”) (collectively, “Petitioners”) for Adjudicative Proceeding, Motion for Consolidation with Docket DE 08-053 and Motion to Suspend Decisions (“Petition”). Petitioners request is not timely and may potentially prejudice the rights of FPL Energy given the procedural posture of Docket No. DE 08-053. Moreover, Petitioners have not demonstrated why the Commission’s orders issued October 30, 2008 conditionally certifying the North Gorham and Bar Mills hydro facility projects for eligibility as Class IV Small Hydro Facilities is procedurally insufficient, as the Commission agreed to revisit certification should GSHA/ARH’s positions prevail in Docket No. DE 08-053. At most, FPL Energy urges the Commission to stay its orders in Docket Nos. DE 08-123 and 08-124 pending the outcome of the issues in Docket No. DE

08-053 on Public Service Company of New Hampshire's ("PSNH") Application for Certification of Class IV Small Hydroelectric Facilities, and to reject other procedural requests in the Petition.

Response

On October 21, 2008, GSHA filed a letter opposing the applications of FPL Energy's North Gorham and Bar Mills hydro facilities to be certified as Class IV REC facilities. GSHA, however, did not request an adjudicative proceeding. Instead, it asked the Commission not to act on [FPL Energy's] applications until a final, unappealable decision on the fish passage question has been issued in DE 08-053."¹

By letter orders dated October 30, 2008 in each of the above referenced proceedings, the Commission certified the North Gorham and Bar Mills facilities respectively as eligible Class IV renewable energy sources effective September 25, 2008 and eligible to be issued New Hampshire Class IV renewable energy certificates. The Commission, however, cautioned that its approval *could* be affected by the outcome of PSNH's Docket No. DE 08-053. As the Commission explained:

Please be advised that in Docket No. DE 08-053, a proceeding involving certification of small hydro facilities owned by Public Service Company of New Hampshire, certain parties have raised questions regarding the specific fish passage requirements necessary for Class IV certification. *The result of that proceeding could affect the certification of this facility.* (Emphasis added (p. 2 of each letter order)).

FPL Energy intervened in Docket No. DE 08-053, but has not participated actively. Following a prehearing conference on November 7, 2008, the procedural schedule provided for a Stipulation on Agreed Facts to be filed with the Commission on

¹ Letter of Granite State Hydropower Association, Docket Nos. DE08-123 and DE08-124, p. 2 (Oct. 21, 2008).

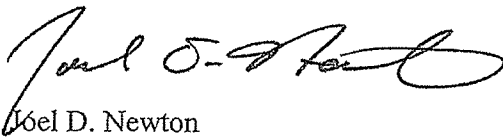
November 17, 2008, and Memoranda from GSNH/ARH and PSNH to be submitted on November 24, 2008. All that now remains is for the Commission to issue its order.

Two days after submitting its Memorandum in Docket No. DE 08-053, and almost four weeks after the Commission issued its October 30, 2008 letter orders conditionally certifying FPL Energy's facilities, Petitioners filed the instant Petition for an adjudicative proceeding, to consolidate the proceedings with Docket No. DE 08-053, and to suspend decisions conditionally certifying the FPL Energy facilities. In reviewing the Petition, the Commission respectfully should be asking two questions: (1) what changed since GSNH filed its October 21, 2008 opposition to the applications in these dockets, asking that the Commission wait for a final decision in the PSNH proceeding; and (2) will FPL Energy be prejudiced by consolidation at this time given the procedural schedule in Docket No. DE 08-053.

There is no reason for the Commission to initiate an adjudicative proceeding or to consolidate the dockets at this time. In its letter orders conditionally certifying the FPL Energy facilities, the Commission found that the outcome of the PSNH proceeding "could" affect the certifications. While FPL Energy intervened in the PSNH proceeding, it has not submitted any arguments itself, but instead chose to follow the proceeding. Had it known that the outcome "would" affect its certifications, as opposed to "could" affect them, FPL Energy's level of participation may have changed. Given that the PSNH proceeding is now pending final Commission action, consolidating the proceedings either would result in an unnecessary delay or potentially prejudice FPL Energy. Neither outcome is necessary.

Rather than initiating an adjudicative proceeding, consolidating these dockets or granting other procedural relief sought by Petitioners, FPL Energy would not object to an immediate stay of the proceedings in Docket Nos. DE 08-123 and DE 08-124 pending the outcome of Docket No. DE 08-053, as also requested by Petitioners. Petition at ¶ 8. Such a limited stay would be consistent with the Commission's orders conditionally certifying the FPL Energy facilities and would, perhaps most importantly, have no effect on the current procedural posture of Docket No. DE 08-053 or prejudice FPL Energy. Petitioners also will not be harmed by following the procedures outlined in the Commission's conditional certifications, as their issues could subsequently be addressed, if necessary, if the Commission rules in their favor in Docket No. DE 08-053. Accordingly, FPL Energy urges the Commission to deny the Petition.

Respectfully submitted,



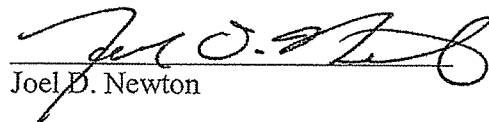
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was, on this date, sent either by first-class mail, postage prepaid, or by electronic mail to those persons listed on the Service List.

Date: December 8, 2008



Joel D. Newton