STATE OF MAINE
PUBLIC UTILITIES COMMISSION

ORDER DENYING NEW RENEWABLE RESOURCE CERTIFICATION

CHRISTOPHER M. ANTHONY D/B/A PIONEER DAM
Request for Certification for RPS Eligibility

WELCH, Chairman; VAFADES and LITTELL, Commissioners

I. SUMMARY

In this Order, we deny Christopher M. Anthony d/b/a Pioneer Dam’s (Pioneer Dam) petition for certification of the hydroelectric Marsh Power Facility (Facility) as a Class I new renewable resource pursuant to Chapter 311, § 3(B)(3)(c) of the Commission’s rules.

II. BACKGROUND

A. New Renewable Resource Portfolio Requirement

During its 2007 session, the Legislature enacted an Act To Stimulate Demand for Renewable Energy (Act). P.L. 2007, ch. 403 (codified at 35-A M.R.S.A. § 3210(3-A)). The Act added a mandate that specified percentages of electricity that supply Maine’s consumers come from “new” renewable resources. Generally, new renewable resources are renewable facilities that have an in-service date, resumed operation or were refurbished after September 1, 2005. The percentage requirement starts at one percent in 2008 and increases in annual one percent increments to ten percent in 2017, unless the Commission suspends the requirement pursuant to the provisions of the Act.

As required by the Act, the Commission modified its portfolio requirement rule (Chapter 311) to implement the “new” renewable resource requirement. Public Utilities Commission: Amendments to Portfolio Requirement Rule (Chapter 311), Docket No. 2001-391, Order Adopting Rule and Statement of Factual and Policy Basis (Oct. 22, 2007) (Order Adopting Rule). The implementing rules designated the “new” renewable resource requirement as “Class I” and incorporated the resource type, capacity limit,

1 Maine’s electric restructuring law, which became effective in March 2000, contained a portfolio requirement that mandated that at least 30% of the electricity to supply retail customers in the State come from eligible resources, which are either renewable or efficient resources. 35-A M.R.S.A. § 3210(3). The Act did not modify this 30% requirement.

2 The “new” renewable resource requirement was designated as Class I because the requirement is similar to portfolio requirements in other New England states that are referred to as “Class I.” Maine’s pre-existing “eligible” resource portfolio requirement is designated as Class II.
and the vintage requirements as specified in the Act. The rules thus state that a new renewable resource used to satisfy the Class I portfolio requirement must be of the following types:

- fuel cells;
- tidal power;
- solar arrays and installations;
- wind power installations;
- geothermal installations;
- hydroelectric generators that meet all state and federal fish passage requirements; or
- biomass generators, including generators fueled by landfill gas.

In addition, except for wind power installations, the generating resource must not have a nameplate capacity that exceeds 100 MW. Finally, the resource must satisfy one of four vintage requirements. These are:

1) renewable capacity with an in-service date after September 1, 2005;

2) renewable capacity that has been added to an existing facility after September 1, 2005;

3) renewable capacity that has not operated for two years or was not recognized as a capacity resource by the ISO-NE or the NMISA prior to September 1, 2005, and, after September 1, 2005, has resumed operation or has been recognized by the ISO-NE or NMISA as a capacity resource; or

4) renewable capacity that has been refurbished after September 1, 2005 and is operating beyond its useful life or employing an alternate technology that significantly increases the efficiency of the generation process.

The implementing rules (Chapter 311, § 3(B)(4)) establish a certification process that requires generators to pre-certify facilities as a new renewable resource under the requirements of the rule and provides for a Commission determination of resource eligibility on a case-by-case basis.\(^3\) The rule contains the information that must be included in a petition for certification and specifies that the Commission shall provide an opportunity for public comment if a petitioner seeks certification under vintage categories 2, 3 and 4. Finally, the rule specifies that the Commission may revoke a

\(^3\) In the Order Adopting Rule at 6, the Commission noted that a request for certification can be made at any time so that a ruling can be obtained before a capital investment is made in a generation facility.
certification if there is a material change in circumstance that renders the generation facility ineligible as a new renewable resource.

B. Petition for Certification

On December 1, 2011, Pioneer Dam filed a petition for certification of the Facility located in Frankfort, Maine as a Class I new renewable resource. Pioneer Dam sought Class I certification under Section 3(B)(3)(c), the resumed operations vintage category, of Chapter 311 of the Commission's rules.\(^4\) According to the petition, the 400 kW hydroelectric Facility had its generation equipment installed between 1983 and 1984 on the dam that was built in approximately 1900. The petition states the Facility ceased operation “before April 2008” and was returned to service in early October 2011. Supplemental generation data supplied on December 20, 2011 under protective order indicates the facility ceased operation in March 2008. Pioneer Dam asserted that the Facility was eligible for Class I new renewable resource certification under the resumed operations vintage because the Facility had ceased operation for more than two years, and had resumed operation after September 1, 2005.

On February 29, 2012, in response to Staff’s request for additional information demonstrating that the Facility meets state and federal fish passage requirements, Pioneer Dam provided a FERC Notice of Exemption of Small Hydroelectric Power Project From Licensing, a FERC Order Amending Exemption, and numerous Maine Department of Environmental Protection Water Quality Certificates.

As required by our rules, the Commission provided interested persons with an opportunity to comment on the Pioneer Dam petition. The Commission received two comments, one from the Natural Resources Council of Maine (NRCM), filed on December 29, 2011, and one from the Conservation Law Foundation (CLF), filed on December 30, 2011. Both NRCM and CLF recommended denial of the petition on the grounds that the Facility did not cease operations prior to September 1, 2005. They argued that the legislative intent was to incentivize new renewable generation, not provide for a mechanism for old renewable generation to simply shut down for two years and then resume operation as a new renewable resource. Additionally, CLF stated that the intent of the legislation was to afford an opportunity to generators that were dormant at the time the legislation was enacted to become eligible if restarted.

On February 21, 2012, Pioneer Dam submitted a response to NRCM and CLF’s comments, defending its petition and arguing that NRCM and CLF misinterpreted the renewable portfolio standards (RPS) statute and rule. Pioneer Dam argued that the language provides for facilities to be certified as Class I new renewable resources as long as the facility has shut down for at least two years, regardless of whether the facility shut down prior to, or after, September 1, 2005. Pioneer Dam stated that there is no “prior to September 1, 2005” language in the statute and further asserted that the “prior to

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\(^4\) The resumed operations vintage category applies to renewable generation facilities with renewable capacity that has not operated for two years or was not recognized as a capacity resource by the ISO-NE or the NMISA prior to September 1, 2005, and, after September 1, 2005, has resumed operation or has been recognized by the ISO-NE or NMISA as a capacity resource. Ch. 311, § 3(B)(3)(c).
September 1, 2005” language in the rule only modifies the phrase “was not recognized by the ISO-NE or NMISA as a capacity resource.” Pioneer Dam also stated that based upon the recollection of Pioneer Dam’s agents from their participation in the legislative process creating the RPS statute, this issue was not raised during the legislative process and no evidence has been presented to indicate otherwise.

On March 8, 2012, Staff issued Recommended Decision to deny certification on the basis that the Facility did not cease operation prior to September 1, 2005. No comments were received on the Recommended Decision by the deadline for comment. The Commission deliberated this matter on March 27, 2012.

III. DECISION

As mentioned above, Pioneer Dam is seeking certification under the “resumed operation” vintage category. This vintage category is set forth in both Chapter 311 of the Commission’s rules and the RPS statute set forth in Title 35-A, section 3210.

Under Chapter 311, the resumed operation vintage category requires that the renewable generation facility:

has not operated for at least two consecutive years or was not recognized by the ISO-NE or NMISA as a capacity resource prior to September 1, 2005, and, after September 1, 2005, resumed operation or was recognized by the ISO NE or NMISA or as a capacity resource.

Ch. 311, § 3(3)(c). The resumed operation vintage category in the RPS statute is slightly different. This statutory language requires that the renewable capacity resource:

For at least 2 years was not operated or was not recognized by the New England independent system operator as a capacity resource and, after September 1, 2005, resumed operation or was recognized by the New England independent system operator as a capacity resource.


The ambiguity associated with the resumed operation vintage category contained in the RPS statute was recognized and addressed by the Commission in the Chapter 311 rulemaking process. With regard to the ambiguity in the Title 35-A, section 3210(2)(B-4)(3) language, the Commission’s Order Adopting Rule states that “We have added language [to the rule] to clarify the timing of the two-year non-operation period (the third vintage category) must occur prior to September 2005.” Order Adopting Rule at 6. Therefore, the timing of the two-year cessation period is clear. As stated in the Order Adopting Rule, the timing language was added to clarify that a two-year non-operation period must be completed prior to September 2005. Consistent with this interpretation, the Commission has only certified facilities under the resumed operations vintage category that ceased operations prior to September 1, 2003, two years or more prior to September 1, 2005. See, e.g., Docket 2008-49 (PPL Energy Plus Petition), Docket 2008-336 (Indeck Energy –
Alexandria Petition), Docket 2010-254 (Thundermist Hydro Petition), or Docket 2011-55 (Essex Hydro Petition).

For this reason, we deny certification of the Pioneer Dam's Marsh Power hydroelectric facility as a Class I new renewable resource eligible to satisfy Maine's new renewable resource portfolio requirement pursuant to Chapter 311, § 3(B)(3)(c) of the Commission rules. Pioneer Dam is welcome to resubmit a petition for certification under another vintage category, if applicable.

Dated at Hallowell, Maine, this 27th day of March, 2012.

BY ORDER OF THE COMMISSION

Karen Geraghty
Administrative Director

COMMISSIONERS VOTING FOR: Welch
                                      Vafiades
                                      Littell
NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. **Reconsideration** of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought. Any petition not granted within 20 days from the date of filing is denied.

2. **Appeal of a final decision** of the Commission may be taken to the Law Court by filing, within 21 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.

3. **Additional court review** of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

**Note:** The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.