STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2012-166
July 9, 2012

EPICO USA INC
Request for Certification for RPS Eligibility

ORDER GRANTING NEW
RENEWABLE RESOURCE
CERTIFICATION

WELCH, Chairman; LITTELL and VANNOY, Commissioners

I. SUMMARY

In this Order, we approve EPICO USA Inc.'s (EPICO) petition for certification of the Middle Kezar Facility (Facility) as a Class I new renewable resource pursuant to Chapter 311, § 3(B)(3)(c) of the Commission's rules, contingent upon the installation of a revenue quality meter.

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.¹ 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

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.
resource requirement as "Class I" and incorporated the resource type, capacity limit, 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. The rule contains the information that must

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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.

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.
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 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 April 19, 2012, EPICO USA Inc. ("EPICO") filed a petition to certify its 150 kW hydro-electric generation facility ("Middle Kezar Facility") as a Class I New Renewable Resource under the resumed operation provision of the Commission's renewable portfolio rules. Ch. 311, § 3(B)(3)(c). The Middle Kezar Facility is located on the Ossipee River in York County, Maine with Porter, Maine on the north side of the river and Parsonsfield, Maine on the south side. The petition states the Middle Kezar Facility is part of the Kezar Falls project that also includes the 350 kW Upper Kezar station and the 500 kW Lower Kezar station. The petition states the Middle Kezar Facility ceased operations on or before December 17, 2001 and resumed operations in October 2011 and that the Middle Kezar Facility meets applicable state and federal fish passage requirements.

On May 25, 2012, EPICO completed their petition by filing under protective order monthly generation data for the Kezar Falls project.

As required by our rules, the Commission Staff provided interested persons with an opportunity to comment on the EPICO petition. No comments were filed.

The Commission Staff issued a recommended decision on June 25, 2012 that provided interested persons with an opportunity to comment. No comments were filed.

III. DECISION

As an initial matter, for a hydroelectric facility to qualify as a new renewable resource it must meet all applicable state and federal fish passage requirements and cannot exceed 100 MW. Ch. 311, § 3(B). Based upon the documentation filed in this case, we conclude that the 150 kW Facility presently meets applicable state and federal fish passage requirements. It is also worth noting that the Kezar Falls Project has received certification from the Low Impact Hydropower Institute (LIHI) (LIHI Certificate #70). The criteria standards for certification, which include fish passage and protection are "typically based on the most recent, and most stringent, mitigation measures recommended for the dam by expert state and federal resource agencies, even if those measures aren't a requirement for operating." 4

4 http://www.lowimpacthydro.org/about.html
As mentioned above, EPICO is seeking certification under the resumed operation vintage category. The interpretation of the resumed operation category was recently clarified; the facility must have ceased operation on or before September 1, 2003 and resumed operation after September 1, 2005. Christopher M. Anthony D/B/A Pioneer Dam Request for Certification for RPS Eligibility, Docket No. 2011-460, Order Denying New Renewable Resource Certification (March 27, 2012). Actual meter data are insufficient to show that the Middle Kezar Facility ceased operation before September 1, 2003 because the output from the Facility is presently metered in combination with the output from the Lower Kezar Facility and reported as Lower Kezar Falls. However, we find that the letters sent to FERC, filed in this case and dated December 17, 2002, August 26, 2004, and May 16, 2006, sufficiently document that the Facility went offline before September 1, 2003 and continued to be offline through September 1, 2005. Therefore we find the Facility qualifies under the resumed operation vintage category.

While qualifying as a new renewable resource, the actual renewable energy output from the Facility cannot now be accurately determined because the Facility is metered in combination with the Lower Kezar facility, which is not a new renewable resource. EPICO proposes to temporarily allocate 23.08% (150 KW/650 KW) of the production of Lower Kezar Falls to the Middle Kezar Facility and 76.92% (500 KW/650 KW) to the Lower Kezar facility until a new, separate revenue quality meter is installed at the Middle Kezar Facility. We do not agree with this approach and our certification is conditioned upon the installation of a revenue quality meter that can measure the actual renewable energy output from the Facility. The Commission, in granting new renewable resource certification to the Verso Bucksport biomass facility, ultimately approved the use of an incremental method of calculating the renewable energy output because Verso Bucksport provided sufficient support (including an auditing requirement of calculations and metered data) to show that the method of renewable energy output would be “appropriate, objective, and verifiable.” Verso Bucksport LLC, Docket No. 2011-102, Supplemental Order Modifying Renewable Energy Calculation Method at 3 (April 5, 2012). While the complexities of the Verso Bucksport case are not present here, we still adhere to the basic sense that the output from the Facility should be verifiable. We have no way of verifying the actual amount of renewable generation from the Facility using the fractional method proposed by EPICO. Once the revenue quality meter is installed, the actual amount of renewable generation is known. Additionally, EPICO states in its petition that it is already planning to install a revenue quality meter at the Facility, so we do not see this requirement as over burdensome.

For these reasons, we grant certification of the metered output from the 150 kW Middle Kezar 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. By this approval, output from Middle Kezar only qualifies once a revenue quality metered is installed.

Accordingly, we

ORDER
That the Middle Kezar hydroelectric facility is certified as a Maine Class I New Renewable Resource as of the time a revenue quality meter is installed to measure the output of the facility.

Dated at Hallowell, Maine, this 9th day of July, 2012.

BY ORDER OF THE COMMISSION

[Signature]
Karen Geraghty
Administrative Director

COMMISSIONERS VOTING FOR:  Welch
                             Littell

COMMISSIONERS ABSENT:      Vannoy
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.