STATE OF MAINE
PUBLIC UTILITIES COMMISSION

ORDER GRANTING NEW
Request for Approval of Certification for
RPS Eligibility

VANNOY, Chairman; McLEAN and WILLIAMSON, Commissioners

May 11, 2017

ESSENTIAL POWER MASSACHUSETTS, LLC

I. SUMMARY

Pursuant to this Order, the Gardners Falls Project (Project), a 3.58 MW run-of-river hydroelectric project located along the Deerfield River in the towns of Buckland and Shelburne in Franklin County, Massachusetts and owned by Essential Power, LLC through its affiliate Nautilus Hydro, LLC (Nautilus),1 is certified as a Class I New Renewable Resource that is eligible to satisfy Maine’s new renewable resource portfolio requirement pursuant to Chapter 311, section 3(B) 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.2 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.

1 The petition submitted in this docket explains that the name of the affiliate owner of the Facility was changed from Essential Power Massachusetts, LLC to Nautilus Hydro, LLC in January 2017. Therefore, although Essential Power Massachusetts, LLC submitted the present petition, as the current owner of the Facility, Nautilus Hydro, LLC will be considered the appropriate petitioner.

2 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.
As required by the Act, the Commission modified its portfolio requirement rule (Chapter 311) to implement the “new” renewable resource requirement. Order Adopting Rule and Statement of Factual and Policy Basis, Docket No. 2007-391 (Oct. 22, 2007). The implementing rules designated the “new” renewable resource requirement as “Class I”\(^3\) 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 requirement; 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 and has resumed operation or has been recognized by the ISO-NE or NMISA after September 1, 2005; or
4) renewable capacity that has been refurbished after September 1, 2005 and is operating beyond its useful life or employing an alternate

\(^3\) 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.
technology that significantly increases the efficiency of the generation process.

Chapter 311, § 3(B)(4) of the Commission’s rules establishes 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 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, or 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 February 28, 2017, Nautilus filed a petition to certify its Gardners Falls Project as a Class I New Renewable Resource under the resumed operations provision of the Commission’s renewable portfolio rules. Ch. 311, § 3(B)(3)(c). Pursuant to Commission rules, an opportunity for comment was issued on March 6, 2017. No comments were received. The Commission Staff issued an information request on March 6, 2017 requesting documents identified by Nautilus in its petition and requesting clarification regarding whether the dollar amount associated with each refurbishment project had been capitalized for federal tax purposes. Nautilus filed its responses on March 17, 2017.

According to the petition, the Gardners Falls Project constructed in 1904, at which time it included two hydro-electric turbines. The Gardners Falls Project was subsequently expanded twice, first in 1914 to add two turbines and then in 1924 to add one more. One of the 1904 turbines was retired in 1971. The Gardners Falls Project currently includes four operational turbine-generator units with a total generating capacity of 3.58 MW.

Nautilus maintains that its efforts to remedy seepage and other related issues either underneath, upstream or downstream of the Gardners Falls Project powerhouse constitute a refurbishment in accordance with Chapter 311, section 3(B)(3)(d). According to Nautilus, nearly $5 million in expenditures have been invested since 2011 to address seepage and sinkhole issues caused by deterioration of the canal wall. Since 2011, the seepage and related issues have caused the Gardners Falls Project periodically cease or reduce operations, including a present shutdown which began in May 2015. Nautilus asserts that the Gardners Falls Project will resume operations in the near future, but it cannot predict that date with certainty. To support its assertion that the Gardners Falls Project has been refurbished, Nautilus provided a list of claimed

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4 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.
refurbishment expenditures. Finally, Nautilus states that the Gardners Falls Project is in compliance with all relevant fish passage requirements.

III. DECISION

After considering Nautilus’s petition and the additional information provided by Nautilus in response to Staff’s questions, the Commission finds that the Gardners Falls Project satisfies the resource type, capacity limit, and vintage requirements of Chapter 311, section 3(B)(3)(c), and therefore its full output qualifies as a Maine Class I New Renewable Resource. The Gardners Falls Project is a hydroelectric generator that meets all fish passage requirements (Nautilus represents that the Gardners Falls Project is currently in compliance with all relevant fish passage requirements, and the documents supplied by Nautilus and reviewed by Staff do not present any evidence to the contrary). Additionally, the total capacity of the Gardners Falls Project does not exceed 100 MW. Finally, Nautilus’s Gardners Falls Project has been refurbished and is operating beyond its useful life, as explained below.

A. Vintage

Nautilus seeks certification under the refurbishment prong of the vintage criteria contained in Chapter 311, section 3(B)(3)(d). This refurbishment prong is also contained in the definition of “New” as applied to any renewable capacity resource in 35-A, MRSA § 3210(2)(B-4). The refurbishment prong defines a new renewable resource as a generation facility that:

- Has been refurbished after September 1, 2005 and is operating beyond its previous useful life or is employing an alternate technology that significantly increases the efficiency of the generation process.

This prong is a two part test that requires the Commission to first determine whether the facility has been “refurbished,” and then to determine whether the facility is operating beyond its previous useful life or employing an alternate technology that significantly increases the efficiency of the generation process.

To clarify the meaning of refurbishment, the Legislature enacted an amendment to the refurbishment prong of the vintage requirement. Pursuant to the statutory amendment, “to refurbish” means “to make an investment in equipment or facilities, other than for routine maintenance and repair, to renovate, reequip or restore the renewable capacity resource.” 35-A M.R.S.A. § 3210(2)(B-4).

5 The Commission interprets this language as making “explicit the Commission’s existing practice of disregarding investments made for routine maintenance and repair when looking at whether a facility has been refurbished.” Verso Bucksport LLC, Request for Certification for RPS Eligibility, Docket No. 2011-102, Order Granting New Renewable Resource Certification at 7, fn. 10 (Nov. 23, 2011).
As stated by the Maine Law Court, the purpose of the refurbishment provision is to encourage the preservation of older existing renewable generation facilities by creating an incentive for owners to make the investments necessary to preserve and extend the useful lives of these older facilities. *Covanta Maine, LLC v. Public Utilities Commission*, 2012 ME 74, ¶ 16 (2012) (Covanta).

Pursuant to the Law Court’s analysis in Covanta, in the course of making its determination regarding whether there has been a refurbishment, the Commission must consider the nature and character of the expenditures to determine whether they were made for the purpose of repair or maintenance or for investment in equipment or facilities. *Covanta, 2012 ME 74, ¶¶ 17, 19.*

i. Refurbishment

The Commission’s practice in assessing whether a generation facility has been refurbished is to examine a collection of factors, including, but not limited to, the condition of the facility prior to the investments and the nature of the expenditures to determine whether they appear to be related to routine maintenance and repair.

Nautilus has provided a confidential list of claimed refurbishment projects that were necessary to address the seepage related issues. Without divulging confidential elements of Nautilus’s submission, the Gardners Falls Project has received millions of dollar of refurbishments, as represented in the petition. We do not make a finding on whether each of the projects included in Nautilus’s filing independently meets the definition of a refurbishment investment. Rather, we find that the nature, character, and scope of Nautilus’s investments in the Gardners Falls Project in the aggregate go beyond routine maintenance or repair. The aggregated refurbishment investments are therefore sufficient to certify the renewable-based electrical generation derived from the Gardners Falls Project as consistent with the statutory definition of a generation facility that has been refurbished after September 1, 2005.

ii. Operating Beyond the Facility’s Previous Useful Life

Nautilus seeks qualification of its investments under the useful life sub-prong of the refurbishment vintage category. The age of the Project components is between 93 and 113 years old. The Commission has determined that useful life is a broadly defined term that can include the initial design, service, accounting, or economic life of a facility. The Commission has also determined that hydroelectric facilities over 100 years were operating beyond their useful life. Finally, the degree of the refurbishment

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7 *See KEI (Maine) Power Management (IV) LLC, Request for Certification for RPS Eligibility*, Docket No. 2012-00203, Order Granting New Renewable Resource Certification (Oct. 8, 2013); *see also Contoocook Hydro, LLC, Request for Certification*
necessary to address the seepage issues and the resulting interruptions in operations demonstrate that the Project may not have been viable without the refurbishments. Therefore, due to the combination of the age of the Gardners Falls Project and the scope of the damage caused by the seepage issues, we find that the Gardners Falls Project is operating beyond its previous useful life.

Accordingly, the Commission

ORDERS

1. That the electrical generation of the Gardners Falls Project is certified as a Maine Class I New Renewable Resource; and

2. That Nautilus, or the Facility’s successive owner, shall provide timely notice to the Commission of any material change in the characteristics or operation of the Facility, including applicable fish passage requirements, from that described in the submissions filed by Nautilus in this proceeding.

3. That ongoing certification is contingent upon continued compliance with any fish passage requirements that applicable federal and/or state agencies may impose.

Dated at Hallowell, Maine, this 11th day of May, 2017.

BY ORDER OF THE COMMISSION

/s/Harry Lanphear

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Harry Lanphear
Administrative Director

COMMISSIONERS APPROVING:  VANNOY
                                MCLEAN
                                WILLIAMSON

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.