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November 17, 2023

Daniel C. Goldner, Chairman
New Hampshire Public Utilities Commission
21 South Fruit Street
Concord, NH 03301

**Re: Docket No. DE 23-009
Petition of Squam River Hydro LLC
Town of Ashland's Supplemental Filing**

Dear Chairman Goldner:

The Town of Ashland ("Ashland") submits this letter pursuant to the New Hampshire Public Utilities Commission's ("Commission" or "PUC") November 7, 2023 Procedural Order in the above-captioned proceeding, requesting that Squam River Hydro, LLC ("SRH"), the Department of Energy ("DOE") and the Town of Ashland ("Ashland" or "Town") provide certain information the Commission deemed relevant to its determination of whether it has jurisdiction over Ashland in this matter. Without conceding that the requested information is relevant or material to the issue of jurisdiction before the Commission¹, Ashland provides the below responses and information, which it has prepared to the best of its abilities and following a diligent review of its records, and further states as follows:

By way of background, Ashland has operated as a municipal electric utility since 1918 when it purchased the Ashland Electric Company that was established in 1888. It currently has 1,106 residential customers, 244 small and large commercial customers, and 4 industrial customers. All of the customers to which Ashland provides electric service are located within the Town's corporate boundaries. On an annual basis, Ashland sells 18,626,110 kWh, which it purchases from the Vermont Public Power Supply Authority ("VPPSA"). As demonstrated by the attachments to this letter, Ashland sets its own rates (Attachment 1), issues its own rules and regulations (Attachment 2), and publishes an Application for Electric Service (Attachment 3). The Ashland Board of Selectmen most recently approved electric rates effective June 1, 2021. (Attachment 4).

¹ Ashland generally agrees that whether SRH is a qualifying facility under the Public Utilities Regulatory Policies Act ("PURPA") may be relevant to the issue of jurisdiction, but it respectfully disagrees that the filings requested of the DOE and Ashland are relevant to that question of law.

As set forth in Ashland’s briefs, filed June 16, 2023 and June 30, 2023, and discussed at the November 7th oral argument, whether the Commission has jurisdiction over Ashland is a question of law. The Public Utility Regulatory Policies Act (“PURPA”) clearly provides that a State regulatory authority such as the PUC only has jurisdiction under PURPA where it has “ratemaking authority”, which is defined as “the authority to fix, modify, approve, or disapprove rates.” 16 U.S.C. § 2602(11). Correspondingly, RSA 362:2 makes clear that Ashland is not a public utility subject to the jurisdiction of the PUC, and therefore the PUC does not, as a matter of law, have the authority to fix, modify, approve, or disapprove Ashland’s electric rates, and does not do so. Whether the Commission has some discrete authority over the operations of some municipal utilities in certain circumstances, pursuant to RSA 38 or any other statute identified by the SRH in its Petition, is irrelevant. Accordingly, Ashland asserts, consistent with the plain language of the controlling federal and state statutes, that the Commission lacks the requisite ratemaking authority and, therefore, jurisdiction over Ashland. *See Attachment 5* (PUC website stating the Commission does not have jurisdiction over municipal utilities.).

Congress designed PURPA in a manner that reflects the fundamental difference in the way public utilities and municipal utilities are commonly regulated nationwide. Investor-owned utilities in New Hampshire and elsewhere are regulated by state public utility commissions. On the other hand, municipal utilities in New Hampshire and elsewhere are self-governing, set their own rates, and are ultimately answerable to the voters in the municipality. As a result, with respect to public utilities, state public utility commissions implement and enforce PURPA, while, with respect to municipal utilities, implementation and enforcement reside with the municipal utilities themselves and the Federal Energy Regulatory Commission (“FERC”).

I. Ashland’s responses to inquiries raised in the Commission’s November 7, 2023 Order

Ashland responds to the Commission’s requests as follows:

1. A copy of Ashland’s standard written interconnection agreement.

As noted above, Ashland has a standard Application for Electric Service (Attachment 3) but it does not have a standard agreement for interconnection to its distribution system for electric generators. With respect to Ashland’s previous arrangements with SRH, there was no separate interconnection agreement; rather, the terms of the parties’ agreement was wholly contained in the Power Purchase Agreement. *See Exhibit 1* to Ashland’s Brief (June 16, 2023).

2. A statement regarding the number of customer-generators it currently has and the terms of service offered to those customer-generators.

There are no “customer-generators” within Ashland’s service territory, as defined by RSA 362-A:1-a, II-b and applied pursuant to New Hampshire’s net metering law, RSA 362-A:9. The Town is aware, however, that certain residential customers have installed behind-the-meter solar panels on their properties, but the Town does not maintain a record of these installations

and does not provide electric service to such customers in a manner different from its other residential customers. Ashland does not offer net metering to its customers nor is it required to. See Attachment 6 (PUC website directing customers of municipal utilities to inquire whether net metering is available); see also RSA 362-A:9 (obligating only electric distribution utilities make standard tariffs for net energy metering available to eligible customer-generators).

3. A statement regarding whether it has a wheeling agreement on file at the FERC.

Upon information and belief, the Town does not have a wheeling agreement on file at the FERC, nor is it aware of any such obligation.

4. A statement regarding whether Ashland provides utility service to any customers located outside its corporate boundaries and, if so, how many of these customers there are, where they are located, and whether Ashland charges them a rate higher than that charged to its customers within its corporate boundaries.

The Town does not provide electric service to any customers outside of the Town's corporate boundaries. Even if Ashland were to serve customers outside its corporate boundaries, the Commission would not have ratemaking authority unless Ashland sought to charge rates higher than charged within Ashland, and then only with respect to such external customers.

II. Supplemental discussion of matters raised during the November 7, 2023 oral argument.

In addition to the specific requests of the Commission's November 7th Order, Ashland hereby responds to related matters raised at the November 7th oral argument. To the extent the Commission's inquiries are intended to better understand how municipal utilities are treated under other statutes and whether the Legislature has delegated to the PUC or imposed on Ashland some other regulatory requirement, it is Ashland's experience that, except for the case of a taking or other acquisition of electric plant(s) under RSA 38, the Legislature has uniformly and categorically excluded municipal utilities from the obligations required of public utilities.

For example, when the Legislature restructured the electric industry in New Hampshire pursuant to RSA 374-F, it did not extend the restructuring requirement to New Hampshire's municipal utilities. RSA 374-F:4, I authorized the Commission to "require the implementation of retail choice of electric suppliers for all classes of utilities providing retail electric service *under its jurisdiction.*" RSA 374-F:4, I [emphasis added]. Accordingly, Ashland and the other municipal electric utilities were not restructured.

By way of further example, when the Legislature created the Electric Renewable Portfolio Standard ("RPS") pursuant to RSA Chapter 362-F, it did not impose the RPS on New Hampshire's municipal utilities. RSA 362-F:3 requires each "provider of electricity" to obtain and retire specified numbers of renewable certificates. RSA 362-F:2, XIV defines a provider of electricity as "a distribution company providing default service or an electricity supplier as

defined in RSA 372-F:2, II, but does not include municipal suppliers that are municipal utilities pursuant to RSA 38.”²

These and other statutes³ evidence the Legislature’s clear intent to exclude municipal utilities from the obligations it imposed on public utilities that are subject to the Commission’s authority and, in particular, its ratemaking authority as that term is defined under PURPA. *See* 16 U.S.C. § 2602(11). The extreme example of a situation where a municipality seeks to take or otherwise acquire property for municipal use pursuant to RSA 38, subject to potential Commission decisions as to the public interest of the taking and the valuation of the property, cannot be reasonably construed as ratemaking authority to fix, modify, approve, or disapprove rates.

In conclusion, there is a single factor that determines whether the PUC has jurisdiction over this matter, namely, ratemaking authority. The Legislature’s consistent decisions to exclude municipal utilities from other regulatory programs and initiatives are instructive inasmuch as they evidence the Legislature’s intent to allow municipal utilities to conduct their own affairs.

Therefore, because the Commission does not have the authority to set the rates that Ashland charges its customers, the PUC does not have the authority to adjudicate SRH’s disputed claims that Ashland has failed to meet any obligations it has under PURPA. Such claims are the province of FERC.

² Similarly, with respect to net energy metering discussed above, when the Legislature established net metering in New Hampshire, it did not require that municipal utilities allow customers to net meter. *See* RSA 362-A:9, I stating that “[s]tandard tariffs providing for net energy metering shall be made available to eligible customer-generators by each electric distribution utility in conformance with net metering rules adopted and orders issued by the commission.”). Accordingly, municipal utilities are not required to net meter.

³ The Legislature requires the Disclosure of Electric Service Energy Sources and Environmental Characteristics and the establishment of an Online Energy Data Platform, but chose not to impose those requirements on New Hampshire’s municipal utilities. RSA 378:49, I limits the disclosure requirements to “providers of electricity” as defined under RSA 362-F (the RPS statute), which does not include municipal utilities, and RSA 378:51 only requires that electric and natural gas utilities jointly establish and operate a data platform, though it permits voluntary participation by municipal utilities.

Further, when the Legislature implemented the Regional Greenhouse Gas Initiative (“RGGI”) program, it created a rebate opportunity for “all retail electric ratepayers” pursuant to RSA 125-0:23, II. The Commission administers the rebate program so that ratepayers of public utilities and municipal utilities are appropriately compensated, but it does not exercise authority over the municipal utilities.

Hon. Daniel C. Goldner
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Pursuant to the Commission's March 17, 2020 Secretarial Letter, this filing is made electronically only and has been provided to the service list, including counsel for the petitioner, SRH.

Sincerely,

A handwritten signature in black ink, appearing to read "Viggo C. Fish". The signature is fluid and cursive, with the first name "Viggo" being the most prominent part.

Viggo C. Fish

VCF:
Cc: Service List (Electronically)