

THE STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

DE 23-009

SQUAM RIVER HYDRO, LLC

**Petition for Reconnection of a Qualifying Facility,
Payment of Avoided Costs, and Payment of Lost Revenues**

**Submission of Squam River Hydro, LLC
in Response to Town of Ashland and Department of Energy Submissions dated
11/17/2023**

As requested by the NH PUC Order of 11/7/2023, Petitioner Squam River Hydro, LLC (“SRH”) submits the following response to the Submission of the Town of Ashland filed November 17, 2023 and the Submission of the New Hampshire Department of Energy filed November 17, 2023.

I. Response to 11/17/2023 Submission of the Town of Ashland

SRH responds to each inquiry raised by the PUC to Ashland as follows:

- a. A copy of Ashland’s standard written interconnection agreement.

SRH has no additional information to provide in response to this inquiry or Ashland’s response to same, but notes that Ashland is required to interconnect with SRH pursuant to 18 C.F.R. § 292.303(c).

- b. A statement regarding the number of customer-generators [Ashland] currently has and the terms of service offered to those customer-generators.

SRH has no additional information to provide in response to this inquiry or Ashland’s response to same.

- c. A statement regarding whether [Ashland] has a wheeling agreement on file at the FERC.

SRH has no additional information to provide in response to this inquiry or Ashland's response to same, but notes that Ashland has no wheeling agreement with SRH. In accordance with 18 C.F.R. § 292.303(d), SRH would need to agree to any wheeling arrangement and it would require a third party electric utility to buy SRH's power – for which SRH would need to be connected to the grid.

- d. 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.

SRH has no additional information to provide in response to this inquiry or Ashland's response to same. However, SRH disagrees that the PUC would not have ratemaking authority *as defined by PURPA* “unless” Ashland sought to charge rates outside of its boundaries higher than the rates charged in Ashland. The PUC *does* have PURPA ratemaking authority over Ashland for the purposes of establishing avoided cost rates under PURPA and determining damages caused by Ashland's failure to reconnect SRH to the electrical grid. *See* SRH's Reply Brief (June 30, 2023) pp.1-5.

II. Response to New Hampshire Department of Energy's Submission in Response to 11/7/2023 PUC Order

The question posed by the PUC to the Department of Energy (DOE) was “whether a municipal electric utility, such as the Town of Ashland Electric Department and/or the Town of Ashland . . . owes any obligations to a renewable energy producer, such as SRH, under RSA 362-F.” SRH does not disagree with the submission filed by the DOE to the extent its analysis is limited to RSA 362-F and RSA 362-A:9, but rather, SRH respectfully submits that the question posed by the PUC misconstrues SRH's argument. SRH's argument was not that Ashland is obligated to procure RECs, but

rather that, as a result of Ashland's unlawful disconnection of SRH from the grid (and its unlawful cessation of purchasing power from SRH), SRH lost revenue from RECs that it otherwise would have had if Ashland had not disconnected SRH. While RSA 362-F may not require Ashland to connect SRH to its electrical system, *see* DOE Submission at p.3, there is no question that PURPA *does* obligate Ashland to interconnect with SRH and purchase its power or pay avoided costs. 18 C.F.R. § 292.303(a) (obligation to purchase); 18 C.F.R. § 292.303(c) (obligation to interconnect).

III. Supplemental Discussion of Matters Raised at 11/7/2023 Oral Argument

SRH understood the PUC's 11/7/2023 procedural order as only requesting information in response to specific questions articulated by the PUC. However, since Ashland re-stated several of its substantive arguments from the 11/7/2023 hearing on this matter, SRH takes this opportunity to correct a misstatement made by counsel for Ashland at the 11/7/2023 hearing, wherein it was claimed that Ashland had no notice prior to SRH filing its Petition with the PUC (January 31, 2023) that SRH was seeking to connect as a PURPA qualifying facility.¹ To the extent it is relevant, SRH made expressly clear to Ashland that it was seeking re-connection and payment of avoided costs under PURPA by way of letter to Ashland dated October 31, 2022.

In its most recent submission, Ashland continues to ignore the broad definition of "rates" as defined under PURPA. Instead, Ashland takes the view that PURPA requires that the PUC have broad, general ratemaking authority over Ashland before the PUC has jurisdiction to enforce PURPA against it. That argument is contrary to the language of PURPA itself, which defines "electric utility" subject to the mandatory purchase obligation as "any person, State agency, or Federal agency, which sells electric energy."

¹ See Hearing Transcript (11/7/2023), 64:7-20.

16 U.S.C. § 2602(4). “State agency” means “a State, political subdivision thereof, and any agency or instrumentality of either.” *Id.* § 2602(16). Moreover, “any electric utility with respect to which a State regulatory authority has ratemaking authority” is a State regulated electric utility under PURPA. 16 U.S.C. § 1602(18). While Ashland acknowledges that “ratemaking authority” under PURPA means “authority to fix, modify, approve, or disapprove rates”, 16 U.S.C. § 1602(11) Ashland ignores, and has not briefed, PURPA’s definition of “rates”: (A) any price, rate, charge, or classification made, demanded, observed, or received with respect to sale of electric energy by an electric utility to an electric consumer, (B) any rule, regulation, or practice respecting any such rate, charge, or classification, and (C) any contract pertaining to the sale of electric energy to an electric consumer.” 16 U.S.C. § 1602(10). If the PUC has authority to “fix, modify, approve, or disapprove” these items that are “rates”, then the electric utility is a State regulated electric utility under PURPA. As SRH has identified, while Ashland may be exempt from PUC regulation for *some* purposes, it is *not* exempt from PUC oversight in all respects. *See* RSA 38:17 (“Any such municipality may contract to supply electricity, gas, or water to individuals, corporations, other municipalities, or any person for the purposes named or contemplated in this chapter, and make such contracts, and establish such regulations and such reasonable rates for the use thereof, *as may from time to time be authorized by the commission.*”) (emphasis added). That is sufficient “ratemaking authority” under PURPA.

As the Texas Public Utilities Commission found when confronted with a similar argument that Ashland is making here, the ratemaking authority contemplated by PURPA does not require general, “traditional”, or “plenary” ratemaking authority in order for a

State PUC to have jurisdiction over an electric utility under PURPA. *See In Re Arrangements Between Qualifying Facilities & Elec. Utilities*, No. 24365, 2002 WL 31955431, at *9 (Texas P.U.C., June 20, 2002) (a copy of that decision was submitted at the NH PUC at the hearing held 11/7/2023). As argued by the Texas qualifying facilities in that case, “nothing in PURPA implies or suggests that ‘ratemaking authority’ means ‘extensive ratemaking authority,’ ‘traditional ratemaking authority,’ ‘general authority to instigate rate-setting proceeding to revise the rates,’ or ‘traditional cost of service ratemaking.’” *Id.* at *7. If “Congress had intended such general, comprehensive, cost of service ratemaking authority, it could have easily stated so.” *Id.* The Texas P.U.C. agreed, finding that even though it did not have “plenary” authority that resembled “traditional” cost of service ratemaking authority over certain (vertically integrated) utilities under its State law, it nevertheless had ratemaking authority over those utilities for purposes of implementing PURPA’s federal mandates. *Id.* at *9.

The same logic applies here. It is clear from PURPA that “ratemaking authority” and “rates” are broadly defined and not limited in scope to traditional cost of service ratemaking. 16 U.S.C. § 1602(10)-(11). The New Hampshire PUC has express authority to enforce PURPA’s mandates with respect to PURPA-defined “electric utilities.” 16 U.S.C. § 824a-3(a)-(b) (purchase obligation applies to “electric utilities”); RSA 362-A:8, II (the “rates established in orders by the commission for the purchase of energy or energy and capacity from qualifying small power producers and qualifying cogenerators under this chapter *or under applicable federal law* exist under the legislative and regulatory authority of the state and shall be deemed a state approved legally enforceable obligation.”) (emphasis added). The New Hampshire PUC has express authority over

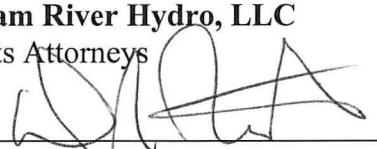
municipal electricity supply contracts under RSA 38:17 including the authority to approve or disapprove “such regulations and such reasonable rates for the use thereof.” RSA 38:17. That is ratemaking authority under PURPA. 16 U.S.C. § 1602(11).

Finally, Ashland’s argument would require the PUC to ignore the references to federal law in RSA 362-A:8. There, the legislature clearly stated that rates established by the commission pursuant to “this chapter” (RSA 362-A) *or under applicable federal law* “exist under the legislative and regulatory authority of the state and shall be deemed a state approved legally enforceable obligation.” RSA 362-A:8, II(a). It is evident the legislature intended to codify the PUC’s authority to enforce PURPA and its ability to set rates under that federal law as a legally enforceable obligation. “Every statute should be so construed that it may have a reasonable effect, agreeably to the intent of the legislature, and, if possible, so that no clause, sentence or word, shall be superfluous, void or insignificant.” *Churchill Realty Trust v. City of Dover Zoning Bd. of Adjustment*, 156 N.H. 668, 675 (2008) (citation omitted). The PUC should not violate that canon of statutory construction here, where RSA 362-A:8, II, provides an express and independent basis for the PUC to find that it has jurisdiction to adjudicate this dispute under PURPA.

Respectfully submitted,

Squam River Hydro, LLC

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Dated: November 30, 2023

Certificate of Service

I hereby certify that a copy of the foregoing petition has on this 30th day of November, 2023 been provided to the service list in Docket 23-009, via e-mail.

By: 
Lynnette V. Macomber