

**THE STATE OF NEW HAMPSHIRE  
before the  
PUBLIC UTILITIES COMMISSION**

Steels Pond Hydro, Inc.

Complaint by Steels Pond Hydro, Inc. Against Eversource Energy

Docket No. DE 15-372

**OBJECTION TO MOTION FOR REHEARING**

Pursuant to Puc 203.07(f), Public Service Company of New Hampshire d/b/a Eversource Energy (“PSNH” or “Eversource” or the “Company”) hereby objects to Steels Pond Hydro, Inc.’s (“SPH”) November 10, 2015, Motion for Rehearing (“Motion”). In the Motion, SPH contends that the Commission’s ruling contained in its October 12, 2015 Secretarial Letter in this docket “is unlawful because (a) it has overstepped its limited authority granted by the Legislature, and (b) improperly invaded FERC’s exclusive jurisdiction over the New England Forward Capacity Market.” Motion at ¶ 11. Neither argument is correct, and the Motion should be denied. In support of this Objection, PSNH states as follows:

1. In its October 12, 2015 decision, the Commission concluded that there was no basis for SPH’s complaint against Eversource and determined that it would not commence an investigation or adjudicative proceeding. In particular, the Commission concluded that:

under RSA 362-A:9 and the Puc 900 rules, a group net metering host customer-generator receiving credits and/or payments at the interconnecting utility’s default service rate, which includes charges based on both electric energy and capacity, may not also accept FCM auction revenue payments based on the capacity value of its generation facility. Acceptance of such payments effectively would result in double-counting of capacity and over-compensation to the customer-generator.

October 12, 2015 Secretarial Letter in Docket No. DE 15-372 at 2.

2. According to SPH, in reaching this conclusion, the Commission erred because it “ruled that a group net metering host may not accept FCM auction payments because it would result in double-counting of capacity and overcompensation to the group net metering host” but “there is nothing in [the] applicable net metering law (i.e., RSA 362-A:9 and the Puc 900 rules) that would empower the NHPUC to require SPH to ‘not accept’ FCM auction revenue payments.” Motion at ¶ 19. In so arguing, SPH turns the Commission’s ruling around. The Commission’s conclusion that a host “may not accept” certain payments is not a limitation on the host. Instead, it sets a restriction on what payments may be provided to the host by the utility, an issue over which the Commission has extensive authority.

3. Counsel for SPH has previously argued:

It is well-settled that the Commission’s authority to establish just and reasonable rates and charges for utilities is plenary. PSNH is a public utility under New Hampshire law. See, RSA 362:2. The public utilities commission is a specialized state agency with technical expertise in the field of public utilities and is vested by the NH Legislature with “plenary authority” over PSNH. Order No. 24,614 (April 13, 2006), at 7. RSA 347:3 endows the PUC with “general supervision of all public utilities ... so far as necessary” [*sic*] to effectuate the Commission’s various enabling statutes.” Additionally, RSA 374:4 delegates to the PUC both the “power” and the “duty, to keep informed as to all public utilities in the state.”

April 12, 2012, Petition of PNE Energy Supply, LLC in Docket No. DE 12-093 at ¶ 10.

Accordingly, counsel for SPH has contended to the Commission that its authority over the establishment of just and reasonable rates for utilities is plenary. This proposition has long-standing precedent, *see, e.g., Mountain Springs Water Co.*, Order No. 15,287, 66 NHPUC 487, 490 (1981) (“Authority of the commission to make orders [directly affecting service and rates] is plenary save in a few specifically example instances.”); *Gas Utilities Supply and Demand*, Order No. 16,124, 68 NHPUC 2, 3 (1983) (“the authority of the Commission to make orders directly affecting rates is plenary pursuant to RSA 374:3.”); *Concord Electric Company*, Order No.

16,884, 69 NHPUC 53 (1984) (“Our authority to establish such rates [for pole attachments] is firmly rooted in statute (RSA 374:2, RSA 378:7) and supported by the New Hampshire Supreme Court which has stated that our rate jurisdiction is plenary except in a few specifically excepted instances. *New Hampshire v New England Teleph. & Teleg. Co.* (1961) 103 NH 394, 40 PUR3d 525, 173 A2d 728; and *Bacher v Public Service Co. of New Hampshire* (1979) 119 NH 356, 402 A2d 642.”).

4. There can be no doubt that under New Hampshire state law, the Commission has the authority to determine the proper rate that a group net metering host is entitled to receive for its output. Nonetheless, the Motion next claims that the Commission’s authority to set such rates is preempted under federal law. SPH is incorrect.

5. This Commission’s authority to set just and reasonable rates for payments by New Hampshire utilities to qualifying facilities (“QFs”), such as SPH, is granted under federal law through the Public Utility Regulatory Policies Act of 1978 (“PURPA”). Consistent with New Hampshire’s law regarding utility rates, under PURPA a rate for purchase of the output from a QF must “Be just and reasonable to the electric consumers of the electric utility and in the public interest.” PURPA, §210(b)(1); 18 CFR §292.304(a)(1)(i). Congress placed the obligation for determining such “just and reasonable rates” on state regulatory authorities. PURPA, §210(f). Accordingly, the Commission is not preempted, but has express authority under federal law to set the rates for payments by utilities to QFs.

6. To have its sales of energy be exempt from Federal Energy Regulatory Commission (“FERC”) regulation and the normal Federal Power Act requirements under Sections 205 and 206 of PURPA, a group net metering host must be a QF. PURPA, §210(e); 18 CFR §292.601(a), (c). Moreover, a sale of energy or capacity by such a QF has to be “made pursuant to a state

regulatory authority's implementation of section 210 the Public Utility Regulatory Policies Act of 1978" or the Federal Power Act exemptions do not apply. 18 CFR §292.601(c)(1).

7. The Commission's Chapter Puc 900 rules establish regulations governing the implementation of net metering. That regulation references PURPA and establishes implementation for such net metering per section 210 of PURPA. *See* Puc 903.02(i). Accordingly, the Commission has determined, pursuant to its PURPA authority and through the Puc 900 rules, what the rates will be for payments to QFs and what the compensation will be for a group host. The Commission's decision set forth in the Secretarial Letter of October 12, 2015, was correct under the Puc 900 standards.

8. SPH claims that "if SPH were to become its own Lead Market Participant in ISO-NE Markets, or appoint a third party to act in this capacity, and no longer utilize Eversource as its Lead Participant, Eversource would be bypassed and would be unable to divert the FCM funds." Motion at ¶ 21. On this point, SPH is correct – it could choose to reject the exemptions of PURPA and sell its output outside of the "state regulatory authority's implementation of section 210 the Public Utility Regulatory Policies Act of 1978" as contained in the Puc 900 rules. If it does so, however, SPH would lose its PURPA exemptions and would be a wholesale generator subject to all of the Federal Power Act rate setting requirements of FERC. If SPH desires to sell its energy and/or capacity in a manner inconsistent with this Commission's Puc 900 rules, and be subject to FERC's wholesale rate jurisdiction, it is free to do so. But it cannot simultaneously be a wholesale generator subject to FERC's rate jurisdiction, as well as a group net metering host that receives payments for its energy or capacity output based upon state jurisdictional PURPA rates.

9. Based upon the interplay of federal (Federal Power Act; PURPA; and FERC Regulations) and state law, the Commission's decision in its October 12, 2015 Secretarial Letter was correct, and the Motion should be denied.


**WHEREFORE**, Eversource respectfully requests that the Commission:

- A. Deny SPH's Motion; and
- B. Order such further relief as may be just and equitable.

Respectfully submitted,

**Public Service Company of New Hampshire d/b/a  
Eversource Energy**

November 16, 2015  
Date

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**CERTIFICATE OF SERVICE**

I hereby certify that, on the date written below, I caused the attached Objection to be served pursuant to N.H. Code Admin. Rule Puc 203.11.

November 16, 2015  
Date

  
Matthew J. Fossum