

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

DE 17-190

AYERS LTEE

Application for Certification as a Class IV Eligible Facility

Order Denying Petition Pursuant to Puc 2505.12(b)

ORDER NO. 26,082

December 5, 2017

In this Order, the Commission denies the petition for an adjudicative proceeding filed by Ayers Ltee under Puc 2505.12(b) based on the denial of its application for Class IV eligibility certification under the New Hampshire Renewable Portfolio Standard. The Ayers Ltee hydroelectric power plants are ineligible for certification under New Hampshire law, because they are located in Quebec, within a control area adjacent to but not synchronous with the New England control area.

I. PROCEDURAL HISTORY AND BACKGROUND

By letter dated August 30, 2017, Ayers Ltee (Ayers or Petitioner) submitted an application for certification of its hydroelectric generation facilities as a renewable energy source eligible to produce Class IV Renewable Energy Certificates (RECs). *See* RSA Chapter 362-F, Electric Renewable Portfolio Standard (RPS); N. H. Code Admin. Rules Puc 2500. According to its application, Ayers owns and operates two run-of-river hydroelectric power plants that are physically located in Quebec. The two plants have a cumulative installed capacity of 4.8 megawatts (MW) and began operation prior to January 1, 2006.

Commission Staff (Staff) reviewed the Petitioner's application and determined that it could not be approved because the plants are physically located in Quebec, within a control area

that is not synchronous with the control area operated by ISO New England, Inc. (ISO-NE). New Hampshire is within the ISO-NE control area. In its denial letter dated October 2, 2017, Staff cited RSA 362-F:6, IV(a) as the basis for its determination of ineligibility and noted the Petitioner's right under Puc 2505.12(b) to file a petition for the Commission to conduct an adjudicative proceeding with respect to the denial.

By letter dated October 12, 2017, Ayers filed such a petition, asking the Commission to reconsider the denial of Class IV eligibility for its hydroelectric power plants pursuant to RSA 362-F:6, IV(a) (Petition). A new docket, DE 17-190, was opened to address the Petition seeking reconsideration of the application denied in RREC 17-90044.

The Petitioner's Class IV eligibility application, Staff's denial letter, the Petition, and other filings and documents related to this matter, can be found at:

<http://puc.nh.gov/Regulatory/Docketbk/2017/17-190.html>.

II. POSITION OF PETITIONER

In its Petition, Ayers argued that the Commission should interpret "source," as used in administration of the RPS, in a manner consistent with the meaning applied by ISO-NE. Petition at 2-3. According to the Petitioner, ISO-NE defines "source" in its glossary as "the point on the transmission system where electric energy is injected," and not as a generator or as another type of physical facility. *Id.* at 2. Ayers asserted that the definition of "source" in RSA 362-F:2, XV "does not limit or contradict the definition found in the ISO-NE market rules of." *Id.* at 3.

Ayers also claimed that market rules recognize the point referred to as the "Hydro-Quebec Interconnection" as "a facility that entitles market participants to use this point in order to meet Capacity Requirements," referencing a document filed with the Federal Energy Regulatory Commission (FERC) which specifically identified that "point as providing 953 MW

per month in reduction of capacity requirements.” *Id.*¹ According to the Petitioner, the ISO-NE market rules “recognize that the Hydro-Quebec Interconnection can and is mapped as a generating facility where capacity is recognized.” *Id.* at 4. Ayers further asserted that Quebec is an adjacent control area that is interconnected both synchronously and asynchronously with the ISO-NE control area, depending on the location of interconnection. *Id.*

The Petitioner acknowledged that RSA 362-F:6, IV(a) permits the issuance of RECs for purposes of RPS compliance from a source “located in a synchronous control area adjacent to the New England control area [if] the energy produced by the source is actually delivered into the New England control area for consumption by New England customers.” *Id.* at 3. According to Ayers, the reference to a “synchronous” control area would entitle the adjacent “New Brunswick system and the portion of Quebec that is synchronous with New England on the Interconnection Derby” to qualify for the RPS. *Id.* at 4 (internal citation omitted).²

Ayers maintained that its hydroelectric generation plants qualify as renewable energy production facilities, the electrical production of which would be delivered “with the appropriate North American Electric Reliability Corporation tagging system for confirmation for [ISO-NE] that the sale of the renewable energy is actually settled in the [ISO-NE] market system.” *Id.* Ayers argued that, because the electricity generated by those plants will be delivered into the New England control area and credited in the ISO-NE market system, the plants should be certified as a renewable energy source eligible to produce Class IV RECs under the RPS. *Id.*

¹ The Petitioner cited the November 4, 2014, ISO-NE Filing of Installed Capacity Requirement, Hydro Quebec Interconnection Capability Credits and Related Values for the 2018/2019 Capacity Commitment Period.

² The Petitioner implied but did not expressly represent in its original REC application and in the Petition that its hydroelectric power plants are not located in a portion of the Quebec control area that is synchronous with the New England control area. On that basis, we assume that the Petitioner’s hydroelectric power plants are located in the portion of the Quebec control area that is asynchronous with the New England control area.

According to the Petitioner, that result would be “aligned” with the common goal of “increasing the available volume of Class IV RECs.” *Id.*

Ayers indicated that it was not requesting a hearing, but “would agree to written pleadings as [its] arguments are pursuant to the interpretation of the [statutory] language and the definition of the word “source” in the context of renewable energy certification.” Petition Cover Letter at 1.

III. COMMISSION ANALYSIS

A petition for an adjudicative proceeding may be filed by a party aggrieved by a decision not to certify its renewable energy generator as eligible to produce RECs under Part Puc 2505, *Source Eligibility Determination and Monitoring*. See N.H. Code Admin. Rules Puc 2505.12(a) and (b). An “adjudicative proceeding” is defined in Puc 102.01 as a “proceeding conducted pursuant to the procedure followed in contested cases, as set forth in RSA 541-A:31 through RSA 541-A:36 and the rules of the commission.” A “contested case” is defined in Puc 102.04 as “a proceeding in which the legal rights, duties, or privileges of a party are required by law to be determined by the commission after an opportunity for hearing.” See also RSA 541-A:1, IV.

Because the Petitioner has not requested a hearing before the Commission and has agreed that the relevant issues may be decided based only on written pleadings, we find it is not necessary to set this matter for hearing and we will not conduct adjudicative proceedings under Puc 203 to resolve it. We do not believe it is necessary to go beyond the Petition and prior filings in this matter and we will decide it on that basis.

Under RSA 362-F:6, IV(a), RECs may be issued based on the electric production of otherwise qualifying renewable energy “sources within the New England control area unless the source is located in a synchronous control area adjacent to the New England control area and the

energy produced by the source is actually delivered into the New England control area for consumption by New England customers.” The term “source” or “renewable energy source” or “renewable source” is defined in RSA 362-F:2, XV to mean

a class I, II, III, or IV source of electricity or a class I source of useful thermal energy. An electrical generating facility, while selling its electrical output at long-term rates established before January 1, 2007 by orders of the commission under RSA 362-A:4, shall not be considered a renewable source.

The Petitioner has not indicated that its hydroelectric power plants are located in a synchronous portion of the Quebec control area and, as noted above, we therefore assume that they are located in an asynchronous portion of the Quebec control area. The Petitioner urges us to interpret the word “source,” in the context of REC production from electricity imports under RSA 362-F:6, IV(a), in the same way the word is used in the ISO-NE market system, to mean “the point on the transmission system where electric energy is injected.” That interpretation would have the effect of rendering the Petitioner’s hydroelectric power plants eligible for Class IV RECs, assuming they meet all other relevant requirements of the RPS statute and rules,³ if the electricity they produce is delivered into the New England control area and credited as an energy import in the ISO-NE market system. We do not believe we can or should adopt that interpretation.

The Petitioner’s preferred interpretation of the term “source,” as defined in RSA 362-F:2, XV, essentially would make irrelevant the physical location of a renewable energy generating facility, so long as its electricity production is credited within the ISO- NE market system. In effect, that interpretation would read the word “synchronous” out of RSA 362- F:6, IV(a) completely, while rendering superfluous the statutory language requiring

³ We express no opinion in this Order as to the eligibility for Class IV RECs of a hydroelectric generation facility located outside of the United States that has not actually installed both upstream and downstream diadromous fish passages and is not subject to FERC jurisdiction.

that “energy produced by the source is actually delivered into the New England control area for consumption by New England customers,” because the requirement would be embedded in the defined term itself. We are neither inclined nor permitted to disregard the plain meaning of the statute.

Rather, in interpreting statutory language, we must ascertain the legislature's intent as expressed in the words of the statute considered as a whole, and not in isolation but in the context of the overall statutory scheme. *Appeal of Northern New Eng. Tel. Operations, LLC*, 165 N.H. 267, 271 (2013). We must interpret legislative intent from the statute as written and not consider what the legislature might have said or add language that the legislature did not see fit to include. *Zorn v. Demetri*, 158 N.H. 437, 438 (2009).

It is not possible to give full effect to the express statutory language enacted by the legislature in RSA 362-F:6, IV(a) without concluding that the reference to “source” is intended to mean the physical location of the renewable energy generating facility. If that physical location is in an adjacent control area that is not “synchronous” with the New England control area, then the source cannot be certified as eligible to produce New Hampshire RECs, even if the energy produced by the source is actually delivered into the New England control area for consumption by New England customers.

Because the Petitioner failed to establish that the hydroelectric power plants are located in a synchronous portion of the Quebec control area, we cannot find that the plants are a “source” eligible to be certified under the RPS. We therefore affirm Staff’s denial of the Petitioner’s REC application and deny the Petition.

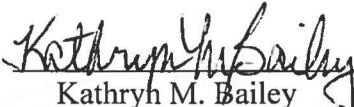
Based upon the foregoing, it is hereby

ORDERED, that the Petition of Ayers Ltee Pursuant to Puc 2505.12(b) Regarding Class IV RPS Eligibility is DENIED.


By order of the Public Utilities Commission of New Hampshire this fifth day of December, 2017.



Martin P. Honigberg
Chairman

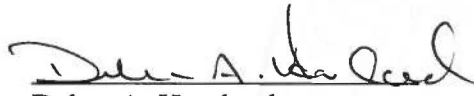


Kathryn M. Bailey
Commissioner



Michael S. Giaimo
Commissioner

Attested by:



Debra A. Howland
Executive Director