

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

**SQUAM RIVER HYDRO, LLC**

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

NOW COMES, Squam River Hydro, LLC (“SRH”), by and through its undersigned attorneys, and respectfully petitions the New Hampshire Public Utilities Commission (“the Commission”) pursuant to 16 U.S.C. sec. 824a-3(f)(1) and 18 C.F.R. sec. 292.401(a), and Admin. Rules Puc 202.01(a) and Puc 203.06, to order the Ashland Electric Department and the Town of Ashland (“Ashland”) to reconnect SRH hydropower facilities to the electric grid, to pay SRH for the power it produces at the avoided cost rate, and to reimburse SRH for lost revenues since it terminated payments to SRH and disconnected the hydropower facilities from the electric grid. In support of this petition, SRH states the following:

1. SRH owns two hydropower electric generating facilities that are qualifying facilities under the Public Utilities Regulatory Policy Act of 1978, 16 U.S.C. sec. 824a-3(a) and implementing regulations at 18 C.F.R. Part 292.303 (“PURPA”). These facilities are also limited electrical energy producers under state law, RSA 362-A, and are Class IV Renewable Energy Certificate (“REC”) facilities under RSA 362-F and N.H. Code Admin Rules Puc 2505.02.<sup>1</sup> These facilities are located in the service boundaries of the Ashland Electric Department; one is located at 6 Mill Street (.21 MW facility) and the other is located at 22 Main Street (.039 MW facility), both in Ashland, New Hampshire.

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<sup>1</sup> The Commission authorized SRH for Class IV REC eligibility on October 12, 2015. See REC 15-293 and REC 15-294.

2. Ashland was required to purchase the electricity generated by the two SRH Qualifying Facilities, including the energy and capacity made available by SRH, at full avoided costs<sup>2</sup>, and to make such physical interconnections to the electric grid to effectuate purchases or sales of electricity authorized by RSA 362-A and PURPA, as well as the production and sale of RECs under RSA 362-F. 18 C.F.R sec. 292.306; *see also* Appeal of Public Service Co. of New Hampshire, 130 N.H. 285, 287 (1988), Appeal of Granite State Electric Co., 121 N.H. 787,789 (1981), and Small Power Producers and Cogenerators, 68 NH PUC 531, 537 (1983). A May 27, 2011 letter from Lee V. Nichols, Superintendent of the Ashland Electric Department at the time, stated the following: “It is our wish, intention and goal to contract and buy all power produced within the confines of Ashland. This includes the Squam River Hydro GristMill upon completion.” Ashland and SRH entered into a purchase power agreement (“PPA”) on January 1, 2012, under which Ashland purchased the power produced by SRH’s hydropower facilities until Ashland terminated the PPA effective in January of 2020; SRH received the last payment under the PPA in February of 2020. Ashland thereafter purchased the power which it had previously obtained from SRH from the Vermont Public Power Supply Authority (“VPPSA”). Ashland illegally disconnected the Mill Street facility from the electric grid on July 15, 2021, and disconnected the Main Street facility from the electric grid on November 22, 2021, pulling the town fuses without notice to SRH. Despite SRH’s ability and capacity to continue supplying hydroelectric power to Ashland and Ashland’s obligation under federal law to purchase the electricity generated by SRH, the Town has refused to reconnect SRH to the grid and refused to pay SRH its avoided costs as required by PURPA.

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<sup>2</sup> 18 CFR sec. 292.101(b)(6).

3. The Ashland Electric Company was founded in 1888 and the Town purchased the power company in 1918 as a publicly owned utility.<sup>3</sup> The Town of Ashland Electric Department is a municipal electric utility under state law, RSA 38, exempt from the definition of “public utility” under RSA 362:2 as a municipal corporation operating within its corporate limits, but still subject to state, and to some degree PUC, jurisdiction. *See* RSA 362:4-a, I. For example, Ashland has obligations under RSA 362-A, see below, and RSA 125-O. *See* DE 14-048 and DE 03-155. For the purposes of this filing, it is clear that Ashland is an “electric utility” under PURPA and thus subject to PURPA requirements. *See* 16 U.S.C. sec. 824a-3(a).

4. 18 C.F.R. sec. 292.303(c) and 292.306 require that an electric utility shall make such interconnection as may be necessary to effect purchases and sales to a QF. As noted above, Ashland has chosen to disconnect the SRH facilities from the electric grid, contrary to state and federal law.

5. This Commission is charged with enforcing the provisions of PURPA under 16 U.S.C. sec. 824a-3(f)(1) and 18 C.F.R. sec. 292.401(a). Further, RSA 362-A:8, II(a) provides that:

Energy or energy and capacity provided by qualifying small power producers and qualifying cogenerators under commission orders or negotiated power purchase contracts are part of the energy mix relied on by the commission to serve the present and future energy needs of the state. 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.]

6. Thus, the energy SRH agreed to produce in accordance with the PPA and which it has been and is prepared to produce in accordance with PURPA, was and is “part of the energy mix relied on by the commission to serve the present and future energy needs of the state” and

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<sup>3</sup> <https://ashlandnh.org/about-ashland/>

the rates established by the PUC “shall be deemed a state approved legally enforceable obligation” consistent with PURPA and RSA 362-A:8, II(a). See also Appeal of Pub. Serv. Co. of New Hampshire, 130 N.H. at 292 (“The PUC’s articulated policy is to treat the filing of a rate petition accompanied by an interconnection agreement signed by the small power producer as a legally enforceable obligation” which “is consistent with subsection (ii) of 18 C.F.R. Sec. 292.304(d)(2).”). In other words, Ashland may have terminated the PPA, but not its legally enforceable obligation to purchase power from SRH or to compensate SRH based on Ashland’s avoided costs – which are determined by the PUC in compliance with FERC’s PURPA regulations. 16 U.S.C. Sec. 824a-3(f)(1).

7. After terminating the PPA with SRH, Ashland inexplicably tripled the local property tax assessment of the SRH facilities. Ashland’s actions with regard to SRH, including, but not limited to, disconnecting its facilities from the electric grid, not only violated the mandates of PURPA, but also constitute a taking without compensation under the federal and state constitutions, U.S. Const. amend. V; N.H. Const. Part I, Art. 12.

8. As a result of having its PPA with Ashland and its ability to sell power to the local utility terminated, SRH has been denied substantial revenues to which it was entitled under federal and state law. Under federal law SRH was entitled to receive avoided costs from Ashland for the power it produced. 18 C.F.R. 292.303(a); 18 C.F.R. 292.304(a)(2). SRH estimates the amount of revenue in avoided costs of which it was deprived, as of the filing of this pleading, to be \$245,523.00, though those lost revenues continue to accrue. SRH was also entitled to receive RECs under state law as noted above. SRH estimates those lost revenues, which are also accruing, to be \$74,153.97.



9. SRH invested over \$419,000.00 in the hydropower facilities in reliance upon the provisions in federal and state law and the May 2011 letter noted above. To the extent that SRH's hydropower facilities are denied interconnection and the ability to receive avoided costs and RECs, SRH will lose that investment which was made in reliance on Ashland fulfilling its legal obligations under federal and state law. SRH respectfully requests that its interconnection costs be reimbursed in accordance with 18 C.F.R. 292.101(7) and 18 C.F.R. 292.306(b), including the investment costs that were necessary to the installation and maintenance of the physical facilities necessary to permit interconnected operations. *See* 18 C.F.R. 292.101(7).

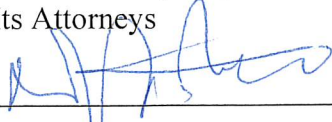
**WHEREFORE**, Squam River Hydro, LLC respectfully requests that the Commission:

- A. Order Ashland to reconnect SRH's hydropower facilities to the electric grid and replace the town fuses which it pulled;
- B. Order Ashland to pay SRH at the avoided cost rate for the power SRH produces going forward;
- C. Order Ashland to reimburse SRH for the revenues it has been denied since Ashland terminated the PPA and disconnected SRH's facilities from the electric grid, including avoided costs and REC alternative compliance payments;
- D. Order Ashland to reimburse SRH for its interconnection costs invested in connection with the 2012 PPA; and
- E. Grant such other relief as the Commission deems appropriate.

Respectfully submitted,

**Squam River Hydro, LLC**

By Its Attorneys



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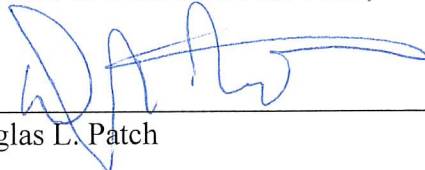
Dated: January 31, 2023

**Certificate of Service**

I hereby certify that a copy of the foregoing petition has on this 31st day of January, 2023 been provided to the Department of Energy, the Office of Consumer Advocate, and the Ashland Electric Department/Town of Ashland.

By: \_\_\_\_\_

Douglas L. Patch



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