

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

DOCKET NO. DE 23-009

SQUAM RIVER HYDRO, LLC

Petition for Reconnection of a Qualifying Facility

Town of Ashland's Preliminary Response to Petition

The Town of Ashland and the Ashland Electric Department (collectively “Ashland”) submit this preliminary response to the Petition for Reconnection of a Qualifying Facility, Payment of Avoided Costs, and Payment of Lost Revenues (“Petition”) filed on January 31, 2023 by Squam River Hydro, LLC (“SRH” or “Petitioner”). Ashland submits this Response, pursuant to the New Hampshire Public Utilities Commission’s (“PUC” or the “Commission”) Order of March 31, 2023, at the outset of this proceeding, before a prehearing conference and technical session have been held and before any briefing and discovery schedule has been set. By submitting this Response, Ashland does not concede that the PUC has jurisdiction over this matter and, further, makes no waiver with regard to any other defenses.

Response to introductory paragraph: The introductory paragraph sets forth the Petitioner’s legal positions and requests for relief and, therefore, does not contain any clear factual allegations. Ashland responds that it is a municipal electric utility and a “municipal corporation” as that term is used in RSA 362 and is, therefore, exempt from the definition of “public utility” defined in RSA 362:2, I. Ashland submits that the Commission lacks jurisdiction over Ashland and, therefore, lacks authority to determine the matters alleged or order the relief requested by SRH in the Petition.

1. Ashland responds to Paragraph 1 that the two SRH hydroelectric facilities are located within the service boundaries of the Ashland Electric Department. The remainder of this Paragraph contains a series of legal conclusions.

2. Paragraph 2 contains a mixture of factual statements and legal conclusions. Ashland admits that it entered into a purchase power agreement (“PPA”) with SRH dated January 1, 2012, which it terminated in accordance with the provisions of the PPA, and that such termination became effective in January 2020. Ashland denies that it disconnected the hydroelectric dams from the electric grid illegally and without notice to SRH. Ashland admits that it purchased power from the Vermont Public Power Supply Authority (“VPPSA”), following termination of the PPA. Ashland denies that it had an obligation to purchase the electricity generated by the two SRH hydroelectric dams that are the subject of the Petition or that it was required to interconnect the hydroelectric dams to the electric grid. By way of further response, Ashland is not aware of any information showing that SRH certified the two hydropower electric generating facilities that are the subject of the Petition as qualifying facilities pursuant to the Public Utilities Regulatory Policy Act of 1978 (“PURPA”) or its implementing regulations.

3. Paragraph 3 contains a mixture of legal conclusions and factual allegations. Ashland admits that it is a municipal electric utility under New Hampshire law and is exempt from the definition of “public utility” under RSA 362:2. Ashland denies that the PUC has jurisdiction over this matter. The remainder of this Paragraph contains vague references to State and federal laws and regulations and PUC dockets to which Ashland does not have a sufficient basis to respond and, therefore, denies the same.

4. Paragraph 4 contains one or more legal conclusions. Ashland denies that it disconnected the hydroelectric dams from the electric grid illegally and without notice to SRH.

5. Paragraph 5 contains one or more legal conclusions. Ashland denies that the laws and regulations cited in this Paragraph confer jurisdiction on the PUC over Ashland in this matter.

6. Paragraph 6 contains one or more legal conclusions. To the extent the legal conclusions in this Paragraph require an answer, Ashland denies that the caselaw, State laws, and regulations cited in this Paragraph confer jurisdiction on the PUC over Ashland in this matter. Ashland denies that its lawful termination of the PPA automatically triggered an obligation to purchase the output of SRH's two facilities, especially absent any express request made by, or notice from, SRH. By way of further response, Ashland is not aware of any information showing that SRH certified the two hydropower electric generating facilities that are the subject of the Petition as qualifying facilities pursuant to PURPA or its implementing regulations.

7. Paragraph 7 contains one or more legal conclusions. To the extent this Paragraph requires an answer, Ashland states that the Board of Tax and Land Appeals denied SRH's appeal of Ashland's 2019 tax assessment in Docket No. 29990-19PT.

8. Paragraph 8 contains unsubstantiated allegations of lost revenues. Ashland denies that it was obliged to make purchases from SRH at avoided costs or that it is liable for REC revenues.

9. Paragraph 9 contains one or more legal conclusions. Ashland denies that it is liable for any investment SRH made in the hydro facilities in reliance on SRH's interpretation of state or federal law.

ASHLAND'S AFFIRMATIVE DEFENSES TO PETITION

1. The Petitioner's claims are barred because the PUC lacks jurisdiction over Ashland in this matter and lacks authority to order the relief requested.

2. Some or all of the Petitioner's claims are barred, in whole or in part, because Ashland failed to properly certify as a Qualifying Facility under PURPA.

3. Some or all of the Petitioner's claims are barred, in whole or in part, because the Petitioner failed to provide adequate notice to Ashland that the Petitioner intended to operate as a Qualifying Facility pursuant to PURPA and the Petitioner cannot retroactively seek collection of costs it failed to pursue in the first instance from Ashland.

4. Some or all of the Petitioner's claims are barred, in whole or in part, by the doctrines of waiver, laches, assumption of risk, or other similar or related doctrines available under applicable law.

5. Some or all of the Petitioner's claims are barred, in whole or in part, because they were caused by acts, or the failure to act, of the Petitioner.

6. The Petitioner's claims are barred, in whole or in part, because the Petitioner has failed to properly mitigate damages.

Respectfully submitted,

Town of Ashland, New Hampshire & Ashland
Electric Department

By Their Attorneys



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Date: May 2, 2023

Certificate of Service

I hereby certify that a copy of the foregoing Petition has on this 2nd day of May 2023, been sent by email to the service list in Docket No. DE 23-009.

A handwritten signature in black ink, appearing to read "Viggo C. Fish", written over a horizontal line.

Viggo C. Fish