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November 17, 2023

Daniel C. Goldner, Chairman  
New Hampshire Public Utilities Commission  
21 South Fruit Street  
Concord, New Hampshire 03301

Re: Docket No. 23-009  
Squam River Hydro, LLC  
Petition for Reconnection of a Qualified Facility, Payment of Avoided Costs,  
And Payment for Lost Revenues

Dear Chairman Goldner:

On November 7, 2023, the Commission issued a Procedural Order Re: Supplemental Filings in the above-captioned docket. The Procedural Order directed the Department of Energy (DOE) to file a position statement regarding “whether a municipal electric utility, such as the Town of Ashland Electric Department and/or the Town of Ashland (individually and collectively, Ashland), owes any obligations to a renewable energy producer, such as SRH, under RSA chapter 362-F”. This letter presents the DOE’s analysis and statement of position on that matter.

The petition by Squam River Hydro, LLC (SRH) requests reconnection of its hydroelectric facilities to the Ashland Electric Department system, payment of avoided costs for the energy produced from the hydroelectric facilities, and payment of lost revenues SRH claims to have lost since the time SRH was disconnected from Ashland, alleging the disconnection was done contrary to the requirements of RSA 362-A and federal law. See, Petition of SRH, at [New Hampshire Public Utilities Commission \(nh.gov\)](http://www.nh.gov).

On November 7, 2023, The Commission held a proceeding to hear oral argument on the issue of jurisdiction in this matter.<sup>1</sup> In response to questions during the proceedings, the Petitioner made statements that the SRH hydroelectric facilities are eligible to produce renewable energy certificates (RECs) pursuant to NH RSA 362-F, the New Hampshire renewable portfolio law. Petitioner indicated that, during the time it sold power from its hydroelectric facilities to Ashland, it sold the RECs associated with that power to a third party, thus giving rise to the Commission’s question in the Procedural Order

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<sup>1</sup> The transcript of this proceeding is not yet available, and the description of Commissioners’ question is, therefore, subject to check.

regarding whether municipal utilities owe any obligation to a renewable energy producer pursuant to RSA 362-F.

### Analysis

RSA 362-F requires “each provider of electricity” to annually procure renewable energy certificates for a percentage of the total megawatt-hours of electricity supplied by the provider to its end-use customers. RSA 362-F:3. The statute defines “each provider of electricity” as “a distribution company providing default service or an electricity supplier as defined in RSA 374-F:2, II, but does not include municipal suppliers that are municipal utilities pursuant to RSA 38.” RSA 362-F:2, XIV.

“Default Service” is defined in RSA 374-F:2, II as “electricity supply that is available to retail customers who are otherwise without an electricity supplier or are ineligible for transition service and is provided by electric distribution utilities under RSA 374-F:3, V or as an alternative, by municipal or county aggregators under RSA 53-E.”<sup>2</sup> (emphasis added).

Ashland has asserted that it is a municipal corporation and is broadly exempt from regulation by the Public Utilities Commission pursuant to RSA 362:2, I. See Ashland’s Initial Brief on Jurisdiction, pages 4-5.<sup>3</sup> The N.H. Legislature continued the exemption from regulation of municipal utilities in drafting RSA 362-F by specifically exempting municipal utilities from the obligation to procure RECs.

The DOE also considered the Commission’s question in the Procedural Order to include whether a municipal utility, has an obligation to interconnect with SRH to allow SRH to produce tradeable RECs. Upon review, the DOE found that the Legislature’s only reference to municipal utilities in RSA 362-F is the provision of exempting municipal utilities from the requirement to comply with the renewable portfolio standard. RSA 362-F:2, XIV. The exclusion of municipal utilities from any requirement under RSA 362-F is consistent with the statutory scheme, as only distribution utilities or electric suppliers as defined in RSA 374:2, II would have incentive to make interconnection available to eligible renewable energy providers, to procure the energy and associated RECs from such providers.

The DOE also briefly reviewed the net metering interconnection rules. RSA 362-A:9 authorizes net energy metering of small (up to 1000 kilowatts) customer-sided generators powered by certain renewable energy sources to allow the sale of customer generated energy to electricity suppliers under conditions specified in the statute. RSA 362-A:9 defines “electricity suppliers” as having the same meaning as stated forth in RSA 374-F:2, II. RSA 362-A, I-a. This definition is repeated in the net metering enabling rules, N.H. Code of Admin Rules Puc 900, at Puc 902.10.<sup>4</sup>

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<sup>2</sup> RSA 53-E allows “municipalities and counties to aggregate retail electric customers, as necessary, to provide such customers access to competitive markets for supplies of electricity and related energy services. The general court finds that aggregation may provide small customers with similar opportunities to those available to larger customers in obtaining lower electric costs, reliable service, and secure energy supplies.” RSA 362-F requires such aggregations to comply with renewable portfolio standards. Ashland is not part of an aggregation, and is a municipal utility, therefore exempt from REC procurement requirements.

<sup>3</sup> The DOE understands that the Commission has directed questions to Ashland to confirm whether Ashland is a municipal utility consistent with the conditions of RSA 362:4, III-a.

<sup>4</sup>In general, the rules provide the requirements whereby utilities offer small customer-generators interconnection for net metering. New Hampshire Code Admin. Rules Puc 903.01.

**DOE Position**

Because RSA 362-F applies to a distribution company providing default service or an electricity supplier as defined in RSA 374-F:2, II, and explicitly excludes municipal electric utilities that are municipal corporations pursuant to RSA 38, the DOE concludes that a municipal electric utility does not owe any obligation to a renewable energy provider under the statute either to procure RECs, or to connect the provider to its electrical system. Consistent with the statute, the Town of Ashland Electric Department does not have any obligation under RSA 362-F to Squam River Hydro, LLC.

Thank you for your attention to this letter.

Respectfully,

*/s/ Suzanne Amidon*

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