

THE STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

DE 23-009

SQUAM RIVER HYDRO, LLC

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

**Submission of Squam River Hydro, LLC
in Response to NH PUC Order of 11/7/2023 Requesting Additional Information**

On November 7, 2023, the NH PUC requested Squam River Hydro (“SRH”) “to provide proof that it has been recognized by the Federal Energy Regulatory Commission (FERC) as a ‘qualifying facility’ under the federal Public Utility Regulatory Policies Act[.]” In response, SRH states as follows:

I. FERC does not have to recognize SRH as a qualifying facility in order for it to be a qualifying facility under PURPA.

SRH is, by definition, a qualifying facility under PURPA, without any certification or recognition requirement imposed on it by FERC. To implement PURPA, FERC promulgated rules set forth in 18 C.F.R. Part 292.

As is relevant here, 18 C.F.R. § 292.203(a) provides that:

Except as provided in paragraph (c) of this section, a small power production facility is a qualifying facility if it:

- (1) Meets the maximum size criteria specified in § 292.204(a);
- (2) Meets the fuel use criteria specified in § 292.204(b); and
- (3) Unless exempted by paragraph (d), has filed with the Commission a notice of self-certification . . .

SRH meets these requirements, and is therefore a qualifying facility under PURPA.

Specifically, the language “except as provided in paragraph (c)” does not apply here,

because that section governs “[h]ydroelectric small power production facilities located at a new dam or diversion.” See 18 C.F.R. § 292.203(c). SRH’s two hydroelectric facilities are not “located at a new dam or diversion,” making § 292.203(c) inapplicable.¹ The question then is whether SRH’s facilities satisfy the three requirements of § 292.203(a) listed above, making them qualifying facilities under PURPA.

The first requirement is that SRH’s facilities meet the maximum size requirements of 18 C.F.R. § 292.204(a). That section provides that:

the power production capacity of a facility for which qualification is sought, together with the power production capacity of any other small power production qualifying facilities that use the same energy resource, are owned by the same person(s) or its affiliates, and are located at the same site, may not exceed 80 megawatts.

18 C.F.R. § 292.204(a)(1).

SRH owns two hydropower electric generating facilities: 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. The facilities combined have a net power production capacity of .249 MW (or 249 kW), well under the 80 MW maximum imposed by § 292.204(a). Therefore, SRH meets the first requirement imposed by 18 C.F.R. § 292.203(a)(1).

The second requirement for QF status is that SRH meet the fuel requirements of 18 C.F.R. § 292.204(b):

(b) Fuel use.

(1)(i) The primary energy source of the facility must be biomass, waste, renewable resources, geothermal resources, or any combination thereof, and 75 percent or more of the total energy input must be from these sources.

¹ SRH’s facilities were originally put in service in the 1880s, before the creation of FERC and the promulgation of PURPA.

(ii) Any primary energy source which, on the basis of its energy content, is 50 percent or more biomass shall be considered biomass.

(2) Use of oil, natural gas and coal by a facility, under section 3(17)(B) of the Federal Power Act, is limited to the minimum amounts of fuel required for ignition, startup, testing, flame stabilization, and control uses, and the minimum amounts of fuel required to alleviate or prevent unanticipated equipment outages, and emergencies, directly affecting the public health, safety, or welfare, which would result from electric power outages. Such fuel use may not, in the aggregate, exceed 25 percent of the total energy input of the facility during the 12-month period beginning with the date the facility first produces electric energy and any calendar year subsequent to the year in which the facility first produces electric energy.

18 C.F.R. § 292.204(b). SRH meets this requirement because the primary energy source of its facilities is a renewable resource (water).

Thus, SRH satisfies the first two criteria of 18 C.F.R. § 292.203(a). The final requirement is that the small power production facility, “[u]nless exempted by paragraph (d), has filed with the Commission a notice of self-certification, pursuant to § 292.207(a); or has filed with the Commission an application for Commission certification, pursuant to § 292.207(b)(1), that has been granted.” 18 C.F.R. § 292.203(a). The exemption (“unless exempted by paragraph (d)”) applies here:

(d) Exemptions and waivers from filing requirement.

- (1) Any facility with a net power production capacity of 1 MW or less is exempt from the filing requirements of paragraphs (a)(3) and (b)(2) of this section.
- (2) The Commission may waive the requirement of paragraphs (a)(3) and (b)(2) of this section for good cause. Any applicant seeking waiver of paragraphs (a)(3) and (b)(2) of this section must file a petition for declaratory order describing in detail the reasons waiver is being sought.

18 C.F.R. § 292.203(d) (emphasis added). SRH has a net power production capacity of less than 1 MW, and is therefore exempt from the FERC filing requirements to establish QF status. *See id.* Nevertheless, although never required by the Town of Ashland in the PPA dated March 28, 2007, or any later version, and not required by law or regulation, SRH filed an optional self-certification in November 2022 that is reflected in FERC's e-library. *See* Attachment 1. Pursuant to 18 C.F.R. § 292.207(a)(3), the self-certification is effective upon filing.

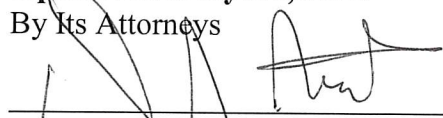
II. Conclusion

SRH is a small power production facility that is a PURPA qualifying facility pursuant to 18 C.F.R. § 292.203(a). *See also* 18 C.F.R. § 292.101(b)(1) ("Qualifying facility means a cogeneration facility or a small power production facility that is a qualifying facility under Subpart B of this part [18 C.F.R. § 292.201-211].").

Respectfully submitted,

Squam River Hydro, LLC

By Its Attorneys



Douglas L. Patch, Esq.

Lynnette V. Macomber, Esq.

Orr & Reno, P.A.

45 South Main Street

PO Box 3550

Concord, NH 03302

(603) 223-9161


dpatch@orr-reno.com

lmacomber@orr-reno.com

Dated: November 17, 2023

Certificate of Service

I hereby certify that a copy of the foregoing petition has on this 17th day of November, 2023 been provided to the Department of Energy, the Office of Consumer Advocate, and the Ashland Electric Department/Town of Ashland (through counsel).

By:  _____
Lynnette V. Macomber