

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 23-009

SQUAM RIVER HYDRO, LLC

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

Order Denying Motion for Rehearing

ORDER NO. 26,980

March 22, 2024

In Order No. 26,937 (January 25, 2024), the Commission determined that it lacked jurisdiction in this matter and dismissed Squam River Hydro, LLC's (SRH) petition. On February 23, 2024, SRH filed a motion for rehearing of Order No. 26,937. The Town of Ashland Electric Department and the Town of Ashland (collectively, Ashland) filed a timely objection to SRH's motion on March 1, 2024.

I. SUMMARY OF ARGUMENTS

SRH argued that the Commission erred in ruling that it had no jurisdiction, because it ignored New Hampshire and federal precedent, which SRH claimed provided the Commission with authority to resolve disputes under the Public Utility Regulatory Policies Act (PURPA), 16 U.S.C. sections 2601, *et seq.* Motion for Rehearing (SRH Mo.) at 2-4. SRH maintained that the Commission improperly applied principles of statutory construction when interpreting RSA 38:17, and it cited RSA 38:12 and :15 as additional authorities in support of its argument that the Commission has ratemaking authority over Ashland. SRH Mo. at 4-5. Similarly, SRH contended that the Commission failed to interpret RSA 362-A:8, II(a) in the context of RSA chapter 362-A's purpose. SRH Mo. at 5-7.

Finally, SRH stated that the Commission “erred by ignoring the federal definition of ‘ratemaking authority’ in favor of a state law definition of ‘public utility’” and that it should have applied PURPA’s definition of “electric utility,” a term it noted is also used in RSA 374:57, to find that Ashland is an electric utility subject to the Commission’s ratemaking authority. SRH Mo. at 3-4. For the first time in this proceeding, SRH averred that the Commission’s ruling in Order No. 26,937 deprived it of “its due process rights under state and federal law,” but provided no legal authority in support of this argument. *Id.* at 3, 6.

In its objection, Ashland asserted that SRH failed to show that the Commission “overlooked or mistakenly conceived” any matters in Order No. 26,937. Objection (Ashland Obj.) at 2-3 (citing *Dumais v. State Pers. Comm’n*, 118 N.H. 309, 311-12 (1978)). It stated that “[t]here can be no reasonable dispute that the Commission does not exercise ratemaking authority over Ashland and that it is not a public utility.” Ashland Obj. at 5. Ashland requested that the Commission deny SRH’s motion for rehearing. *Id.* at 8.

II. STANDARD OF REVIEW

A party may request rehearing of a Commission decision “in respect to any matter determined in the action or proceeding, or covered or included in the order” RSA 541:3. The motion must specify the grounds for claiming that the order is unlawful or unreasonable. RSA 541:4. On appeal, the New Hampshire Supreme Court will review the Commission’s rulings on issues of law *de novo*. *Appeal of Liberty Utils.*, 2023 N.H. LEXIS 199 (N.H. Nov. 15, 2023) (slip op. at 3).

III. COMMISSION ANALYSIS

Administrative agencies may exercise jurisdiction “only ‘under the precise circumstances and in the manner particularly prescribed by the enabling legislation.’”

Appeal of Vasquez, 175 N.H. 450, 453 (2022) (citing *Appeal of Campaign for Ratepayers' Rights*, 162 N.H. 245, 240 (2011)). Therefore, the Commission's enabling statutes constitute its only source of authority. See *Appeal of New Eng. Cable Television Ass'n*, 126 N.H. 149, 152 (1985); see also *Appeal of Campaign for Ratepayers' Rights*, 162 N.H. at 250 (stating administrative agency's jurisdiction depends entirely on its enabling statutes, and agency "cannot confer jurisdiction upon [itself]." (citation and internal quotations omitted)). "[P]ower and authority not granted [by the legislature] are withheld." *State v. N.H. Gas & Elec. Co.*, 86 N.H. 16, 29 (1932) (citations and internal quotations omitted).

The New Hampshire Supreme Court has stated that, in enacting RSA 362:2, defining the term "public utility," the New Hampshire legislature "did not intend to place all companies and businesses somehow related to railroads, telephone, telegraph, light, heat, and power companies under the umbrella of the [Commission's] regulatory power." *Appeal of Omni Commc'ns*, 122 N.H. 860, 863 (1982) (reviewing history of utilities regulation and statutory and legislative history of RSA 362:2). The Court has reversed Commission orders when it determined that the Commission exceeded its statutory authority. *Appeal of Zimmerman*, 141 N.H. 605, 612 (1997) (reversing decision of Commission that it had jurisdiction to regulate landlord offering telecommunications services to his tenants, because landlord was not "public utility" under RSA 362:2); *Appeal of New Eng. Cable Television Ass'n*, 126 N.H. at 153 (reversing Commission decision ruling that it had authority to consider interests of cable television subscribers when regulating pole attachments); *Appeal of Omni Commc'ns*, 122 N.H. at 861, 864 (reversing Commission's exercise of jurisdiction over communications company because Commission had no authority to regulate use of radio pagers). Although the Commission has "general supervision of all public

utilities,” the Court has held that “[a] municipal corporation [] that operates solely within its corporate limits, is not a ‘public utility’ subject to the [Commission’s] jurisdiction.” *Appeal of Pennichuck Water Works*, 160 N.H. 18, 33 (2010) (citing RSA 374:3 and RSA 362:2, I); *see also New Ipswich Elec. Lighting Dep’t v. Greenville Elec. Lighting Co.*, 108 N.H. 338, 340 (1967) (stating town lighting department was not “public utility” subject to Commission’s jurisdiction “as to operations within the corporate limits of the town.”)

The New Hampshire Supreme Court is the final authority regarding the interpretation of New Hampshire statutes. *State v. Zhukovskyy*, 174 N.H. 430, 434 (2021). It first considers the plain and ordinary meaning of the statutory language and construes all parts of the statute together in a manner that effectuates its overall purpose and avoids an absurd or unjust result. *Appeal of Liberty Utils.*, 203 N.H. LEXIS 199 (N.H. Nov. 15, 2023) (slip op. at 3). It is a well-established rule of statutory construction that statutes should be interpreted to avoid contradicting other statutes dealing with the same subject matter. *In re J.S.*, 174 N.H. 375, 381 (2021). The Commission applied these principles of statutory construction in Order No. 26,937 when interpreting RSA chapter 38 and RSA chapter 362-A.

The purpose of RSA chapter 38 is to authorize municipalities to take privately owned public utility facilities by eminent domain and operate them “as publicly owned facilities.” *State v. City of Dover*, 153 N.H. 181, 190 (2006); *see also Appeal of Pennichuck Water Works*, 160 N.H. 18, 23 (2010); RSA 38:1, II (defining “utility” as a “public utility”). Consistent with this purpose, several provisions of RSA chapter 38 refer to the expansion of municipal utilities through their acquisition and operation of public utility plant either in the same or another municipality. *See* RSA 38:12, *et seq.* This proceeding does not involve Ashland’s acquisition of public utility plant and/or

its operation outside its corporate boundaries, or its construction of energy facilities in territory already served by a public utility, *see Appeal of Ashland Elec. Dep't*, 141 N.H. 336 (1996), so that RSA chapter 38 does not apply.

RSA chapter 362-A's broad purpose, contained in RSA 362-A:1, is limited by its subsequent provisions, including RSA 362-A:4 and RSA 362-A:8. *See N.H. Ins. Guar. Ass'n v. Pitco Frialator, Inc.*, 142 N.H. 573, 577 (1998) (statute's expansive purpose limited by other statutory provisions). The Commission's authority to set rates for the purchase of power from small power producers is derived from RSA 362-A:4, which states that "[p]ublic utilities purchasing electrical energy in accordance with the provisions of this chapter shall pay rates per kilowatt hour to be set . . . by the commission." (Emphasis added). *See Appeal of Granite State Elec. Co.*, 121 N.H. 787, 793 (1981). RSA 362-A:8 codifies the obligations of "public utilities" to purchase this energy. *See id.*, I. RSA chapter 362-A and PURPA provide the Commission with broad powers "to establish and implement rates at which *regulated electric companies* may purchase power from qualifying small power producers" *Appeal of Marmac*, 130 N.H. 53, 57 (1987) (emphasis added). This authority does not extend to municipal utilities that are not "public utilities" under RSA 362:2.

Nor does RSA 374:57, by using the term "electric utility," confer on the Commission ratemaking authority over municipal utilities operating within their corporate boundaries. SRH cited no New Hampshire legal authority indicating that the term "electric utility" refers to municipal utilities or provides the Commission with authority to regulate municipal utilities operating within their corporate boundaries as an exception to RSA 362:2. Instead, the use of "electric utility" and "electric public utility" in RSA 362-A:3, "Purchase of Output of Limited Electrical Energy Producers by Public Utilities," for example, suggests that these terms are interchangeable and both

refer to “public utilities.” *See id.*, I. The Commission is authorized to regulate the rates of “public utilities.” *See* RSA 374:2; RSA 378:5 and :7.

SRH did not raise a due process argument in its petition, either of its briefs, or during oral argument, so the Commission did not address it in Order No. 26,937. The Commission declines to address this argument, because it is not within the scope of the matters to be considered under RSA 541:3.

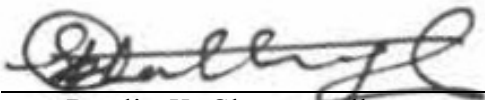
IV. CONCLUSION

The Commission’s authority is governed by state statute, as interpreted by the New Hampshire Supreme Court. SRH has not provided any legal authority to show that the Commission erred in determining that it has no jurisdiction under New Hampshire law to adjudicate SRH’s claims in this docket. Accordingly, the Commission DENIES SRH’s motion for rehearing.

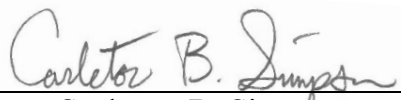
Based upon the foregoing, it is hereby

ORDERED, SRH’s motion for rehearing is DENIED.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of March, 2024.



Pradip K. Chattopadhyay
Commissioner



Carleton B. Simpson
Commissioner

Service List - Docket Related

Docket#: 23-009

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Email Addresses

ClerksOffice@puc.nh.gov
Suzanne.G.Amidon1@energy.nh.gov
Energy-Litigation@energy.nh.gov
nicole.desruisseaux@mclane.com
viggo.fish@mclane.com
thomas.c.frantz@energy.nh.gov
thomas.getz@mclane.com
lmacomber@orr-reno.com
elizabeth.r.nixon@energy.nh.gov
amanda.o.noonan@energy.nh.gov
ocalitigation@oca.nh.gov
dpatch@orr-reno.com
mark.p.toscano@energy.nh.gov