

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

COMPLAINT OF
STEELS POND HYDRO, INC.
AGAINST
EVERSOURCE ENERGY

DE 15-372

**MOTION FOR REHEARING OF COMMISSION LETTER RULING
REGARDING SPH COMPLAINT**

NOW COMES Steels Pond Hydro, Inc. (“SPH”) and respectfully requests that the Commission rehear and reconsider its Letter Ruling issued on October 12, 2015 regarding SPH’s Complaint, and in support hereof says as follows:

I. APPLICABLE LAW

1. Pursuant to RSA 541:3, the Commission may grant rehearing or reconsideration when the motion states good reason for such relief. Pursuant to RSA 541:4 “[s]uch motion shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable.”

2. The Commission’s ruling on October 12, 2015 is contrary to both State and Federal law.

II. INTRODUCTION

3. On September 9, 2015, SPH filed a Complaint against Eversource Energy (Eversource) regarding payment of ISO New England (ISO) forward capacity market (FCM) auction payments as Lead Market Participant for SPH. SPH is a group net metering customer of Eversource.

4. SPH is the owner of a small (under 1 MW) hydroelectric generation station in Antrim, New Hampshire. Prior to May, 2015, Eversource had been purchasing the output of the station at

Eversource's avoided cost rates consistent with its rates for purchases from Qualifying Facilities ("QFs"). See ¶ 33, page 24 of Eversource Delivery Tariff.¹

5. SPH has recently become a net metered customer-generator and "group host" pursuant to RSA 362-A:9 and the Commission's Puc 900 regulations and, in that role, it is compensated for its generation at Eversource's prevailing default service rate.

6. Prior to May, 2015, for purposes of participating in the Forward Capacity Market ("FCM")² administered by the regional grid operator, ISO-New England, SPH had designated Eversource as its Lead Market Participant and Eversource had been passing the FCM revenue through to SPH.

7. Eversource has ceased passing through the FCM revenue to SPH. SPH's Complaint requested, *inter alia*, the Commission to order Eversource to pass through to SPH the FCM auction payment revenues it has received and retained.

8. In its response to SPH's Complaint filed on September 18, 2015, Eversource contends that SPH has not demonstrated any claim to, or justification for, receiving FCM revenue along with the default service payments it receives pursuant to the net metering law and rules and has provided no foundation for any complaint against Eversource.

9. Eversource, appointed by SPH to act as its Lead Market Participant, contends that SPH, as a group net metering host, is entitled to compensation "only" at the default service rate. Therefore, according to Eversource, SPH should not receive additional revenue for participating in the ISO-NE Forward Capacity Market.

10. On October 12, 2015, the Commission ruled that:

...under RSA 362-A:9 and the Puc 900 rules, a customer-generator receiving credits and/or payments at the interconnecting utility's default service rate, which includes charges based on both electric energy and capacity, may not also accept

¹ Eversource is obligated to purchase the electric energy and capacity produced from certain qualified facilities ("QFs") that are eligible small power producers and cogenerators under the Public Utility Regulatory Policies Act of 1978 ("PURPA"). 16 U.S.C. § 824a-3 and 18 C.F.R. § 292.303(a).

² The forward capacity market (FCM) ensures that the New England power system will have sufficient resources to meet the future demand for electricity. Forward capacity auctions are held annually, three years in advance of the operating period. Resources compete in the auctions to obtain a commitment to supply capacity in exchange for a market-priced capacity payment. These payments help support the development of new resources. Capacity payments also help retain existing resources. For example, they incentivize investment in technology or practices that help ensure strong performance. They also serve as a stable revenue stream for resources that help meet peak demand but don't run often the rest of the year. <http://www.iso-ne.com/markets-operations/markets/forward-capacity-market>.

FCM auction revenue payments based on the capacity value of its generation facility. Acceptance of such payments effectively would result in double-counting of capacity and over-compensation to the customer-generator.

III. SUMMARY OF MOTION FOR REHEARING

11. The basis for this Motion for Rehearing is that the Commission's ruling is unlawful because (a) it has overstepped its limited authority granted by the Legislature, and (b) improperly invaded FERC's exclusive jurisdiction over the New England Forward Capacity Market.

12. It is well-settled under Federal law that SPH, or any generator, may currently act as its own lead market participant at ISO-NE. For example, Eversource filed a request for rulemaking with the Commission on August 21, 2014 which, *inter alia*, would eliminate its "obligation to serve as the ISO-NE Lead Market Participant for any QF..." See DRM 15-340, *Eversource Energy Request for Rulemaking Pursuant to Puc 205.01 and 205.03 - Avoided Costs for Mandatory Purchases under PURPA and LEEPA*.

13. Eversource did not disclose or mention the August 21st filing during this proceeding.

14. The Commission's decision in this proceeding would have a serious unintended consequence: it would render SPH, as Group Net Metering host, unable to accept any FCM payment from ISO-NE, even if it were to act as its own Lead Market Participant. This would be contrary to Federal law.

III. APPLICABLE LAW

15. The regulation of public utilities and the establishment of rates to be charged by a public utility are, in the first instance, legislative functions which, in New Hampshire, have been delegated to the Commission. *Legislative Utility Consumers' Council v. Public Service Company of New Hampshire*, 119 N.H. 332, 340 (1979). The Commission's powers derive from enabling authority granted by the legislature. *Appeal of Richards*, 134 N.H. 148, 158 (1991).

16. In *Appeal of Public Service Company*, the Court found:

The PUC is a creation of the legislature and as such is endowed with only the powers and authority which are expressly granted or fairly implied by statute. *Petition of Boston & Maine Railroad*, 82 N.H. 116, 116, 129 A. 880,880 (1925). Consequently, the authority of the PUC [] is limited to that specifically delegated or fairly implied by the legislature and may not be derived from other generalized powers of supervision.

Appeal of Public Service Co., 122 N.H. 1062, 1066 (1982).

17. The foregoing precedent clearly establishes that the Commission's authority is only that which is provided by the legislature. The extent of such authority is derived from the enabling statutes empowering the Commission. There is nothing that would empower the NHPUC to require SPH to “not accept” FCM auction revenue payments.

18. The United States Court of Appeals for the District of Columbia Circuit recently upheld four Federal Energy Regulatory Commission orders related to the Independent System Operator-New England Forward Capacity Market. The Court held that the orders on review fell within FERC's statutory ratemaking authority conferred by the Federal Power Act because FERC's ratemaking authority extends to parameters of capacity markets related to the price of capacity. *New England Power Generators Ass'n v. F.E.R.C.*, 707 F.3d 364 (2013). The FERC has exclusive authority and jurisdiction over the ISO-NE's Forward Capacity Market.

IV. ARGUMENT

19. As noted above, the Commission has ruled that a group net metering host may not accept FCM auction payments because it would result in double-counting of capacity and over-compensation to the group net metering host. The Commission's ruling is unlawful because (a), there is nothing in applicable state net metering law (i.e., RSA 362-A:9 and the Puc 900 rules) that would empower the NHPUC to require SPH to “not accept” FCM auction revenue payments; and (b) the NHPUC improperly invaded FERC's exclusive jurisdiction over the New England Forward Capacity Market. The NHPUC may not interfere with this separation of regulatory authority.

20. SPH concedes that that SPH, as a group net metering host, is entitled to compensation "only" at the default service rate pursuant to State law. However, under Federal law, SPH is also entitled to receive FCM payments from ISO-NE. The Commission erroneously ruled that SPH may not “accept” the FCM payments it is entitled to under Federal law.

21. However, if SPH were to become its own Lead Market Participant in ISO-NE Markets, or appoint a third party to act in this capacity, and no longer utilize Eversource as its Lead Participant, Eversource would be bypassed and would be unable to divert the FCM funds. The FCM funds would then clearly be the property of SPH. The relationship between

Eversource (or another utility) and SPH for Forward Capacity is market purposes is voluntary on the part of SPH.

22. The Forward Capacity Market is administered by ISO-NE pursuant to its Tariff on file with the Federal Energy Regulatory Commission. The NHPUC may not interfere with this separation of regulatory authority. Accordingly, SPH is entitled to receive Forward Capacity Market payments from ISO-NE.

23. Rule Puc 909.08(d) does provide that the group net metering host shall “only” be entitled to compensation at the default service rate. However, this restriction under state law does not and cannot prevent SPG from accepting FCM payments from ISO-NE under its FERC-approved Tariff.

WHEREFORE, Steels Pond Hydro, Inc. respectfully requests that the Commission

- A. Grant this Motion for Rehearing;
- B. Determine that the Commission’s ruling on October 12, 2015 is contrary to both State and Federal law.
- C. Grant such other and further relief as is just.

Respectfully Submitted,
Steels Pond Hydro, Inc.
by its Attorney,

Dated: November 10, 2015

/s/ James T. Rodier
James T. Rodier, Esq.
1465 Woodbury Ave., No. 303
Portsmouth, NH 03801-5918
jrodier@mbtu-co2.com

Certification of Service

Pursuant to Rules Puc 203.02(2) and Puc 203.11, I have served copy of this Motion on each person identified on the Commission’s service list for this docket.

/s/ James T. Rodier