

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 24-032

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
d/b/a EVERSOURCE ENERGY**

**Burgess Plant Bankruptcy Settlement Review Pursuant to RSA 365:28 and
Allied Statutes**

COMMENCEMENT OF ADJUDICATIVE PROCEEDING AND NOTICE OF HEARING

On February 28, 2024, the United States Bankruptcy Court for the District of Delaware (Bankruptcy Court) (Silverstein, J.) issued an order approving a settlement agreement between Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource) and the owners of the Burgess BioPower plant in Berlin, New Hampshire (Burgess BioPower, LLC and Berlin Station, LLC, together, 'Burgess Plant'). This settlement agreement between Eversource and Burgess Plant was reached in the context of Burgess Plant's Chapter 11 bankruptcy petition, which was filed on February 9, 2024, and was considered in the context of Eversource's Stranded Cost Reconciliation Charge (SCRC) proceeding, Docket No. DE 23-091, and also an open docket relating to the Burgess Plant, Docket No. DE 19-142. The settlement agreement approved by the Bankruptcy Court appears to contemplate the severance of the power purchase agreement (PPA) between Eversource and Burgess Plant, which was originally approved, with conditions, by the Commission in 2011. The settlement agreement also has other provisions, such as a \$3,350,000 severance payment made to Burgess Plant by Eversource. The Bankruptcy Court's order approving the settlement agreement, the settlement agreement itself, and other docket filings, other than any information for which confidential treatment is requested of or granted by

the Commission, are available on the Commission's website at <https://www.puc.nh.gov/Regulatory/Docketbk/2024/24-032.html>.

I. BACKGROUND

The PPA between Eversource and Burgess Plant was originally approved by the Commission by Order No. 25,213 (April 18, 2011), issued in Docket No. DE 10-195 (Original Order). The Original Order established a number of conditions on the Commission's approval of Eversource's PPA with Burgess Plant, which had an original expiration date of October/November 2033, based on a 20-year term commencing on the first date of the Burgess Plant's operation. The most significant of the conditions of the Original Order was that any above-market (that is, more expensive than ISO-New England prevailing real-time market prices) costs for power produced by Burgess Plant exceeding \$100 million over the term of the PPA would be refundable through an accounting mechanism termed the "Cumulative Reduction Factor" (CRF).

The Original Order was subject to a series of subsequent modifications by Commission Orders, which followed enactments of the General Court that modified the context and terms of the PPA between Eversource and Burgess Plant. First, Order No. 26,920 (July 1, 2016), issued in Dockets Nos. DE 11-250 and DE 14-238 (Divestiture Order), modified the treatment of energy acquired by Eversource from Burgess Plant as part of the PPA, insofar as Eversource was approved to move through the Divestiture process by the Commission, after the Legislature's endorsement of Divestiture. Second, on December 5, 2018, the Commission further modified the terms of the Original Order, issuing Order No. 26,198 in Docket No. DE 10-195 in response to the General Court's passage, and the Governor's enactment, of Senate Bill 577 (Laws of 2018, ch. 340) ("Chapter 340"), which suspended the operation of the CRF cap/refund mechanism for a period of 3 years. Further modifications were made to the

Original Order in response to Chapter 340 by Commission Order Nos. 26,331 (January 31, 2020) and 26,333 (February 18, 2020), issued in Docket No. DE 19-142. Finally, in Order Nos. 26,665 (August 11, 2022) and 26,705 (October 14, 2022), issued in Docket Nos. DE 10-195 and DE 19-142, and DE 22-050, respectively, in response to the Legislature's passage, and the Governor's enactment, of Senate Bill 271 (2022 N.H. Laws, ch. 275:1), the Commission approved a further one-year extension of the suspension of the operation of the CRF cap/refund mechanism until November 30, 2023.

This series of deferrals of the operation of the CRF cap/refund mechanism ceased, however, with Governor Sununu's 2023 veto (and the General Court's upholding of the veto) of the most recent Legislative effort regarding the Burgess Plant PPA, which would have abrogated the obligation by Burgess Plant to refund the CRF balance permanently. The CRF balance at present is approximately \$71 million. The proper accounting for the CRF's accommodation within Eversource's SCRC rates were considered at length by the Commission and the parties in the DE 23-091 SCRC proceeding, until Burgess Plant filed for Chapter 11 bankruptcy at the Bankruptcy Court on February 9. Eversource and Burgess Plant filed their settlement agreement with the Bankruptcy Court on February 24, 2024, filed a modified version of the settlement agreement supporting documents based on the comments of the U.S. Bankruptcy Trustee on February 26, 2024, and the Bankruptcy Court approved the settlement agreement today, February 28, 2024.

II. ISSUES PRESENTED

Pursuant to RSA 365:28, "At any time after the making and entry thereof, the [C]ommission may, after notice and hearing, alter, amend, suspend, annul, set aside, or otherwise modify any order made by it. This hearing shall not be required when any

prior order made by the [C]ommission was made under a provision of law that did not require a hearing and a hearing was, in fact, not held." RSA 365:28.

The settlement agreement between Eversource and Burgess Plant, by terminating the Commission-approved agreement more than 9 ½ years early, abrogating the CRF refund mechanism, and providing a \$3.35 million severance payment to Burgess Plant from Eversource, among other provisions, could implicate the need by the Commission to modify the terms of the Original Order and subsequent Commission Orders, including the Divestiture Order. Therefore, the Commission will convene an adjudicative hearing proceeding pursuant to RSA 365:28 to assess the settlement agreement pursuant to all relevant Commission Orders and statutes, including RSA Chapters 374, 374-F, and 378, and to engage in factual inquiries related thereto. All subsequent Bankruptcy Court filings, and informational filings made by Eversource and other parties or persons, relating to Burgess Plant, shall be henceforth made in this Docket No. DE 24-032, and Docket No. DE 19-142 shall be CLOSED, with ongoing assessment of this year's SCRC rates to be made in Docket No. 23-091.

At the outset of this proceeding, the Commission requests that the DOE, and any other interested party, file its position statement regarding the Burgess Plant Settlement not later than March 11, 2024. The Commission will hold a hearing regarding the Burgess Plant Settlement matters on March 13, 2024 at 9:00 a.m.

The Commission will be conducting any hearings scheduled in this matter in person. The Commission will consider requests to use a hybrid format to permit remote participation by a specific individual. Such requests will be granted only if the Commission determines a sufficient reason is provided for why an individual is unable to attend in person. Any party requesting a specific individual be permitted to

participate remotely must file a written request with the Commission's Clerk's Office. If the Commission determines that one or more individuals will be permitted to appear remotely, then individuals in the Commission's hearing room, including the Commissioners, will be broadcast on a web-enabled platform.

Based upon the foregoing, it is hereby

ORDERED, that an adjudicative proceeding be commenced for the purpose of reviewing and resolving the foregoing issues pursuant to RSA Chapter 541-A, RSA 365:28, RSA Chapter 374, RSA Chapter 374-F, and RSA Chapter 378, and the Commission's procedural rules; and it is

FURTHER ORDERED, that all informational filings regarding Burgess Plant matters, unless otherwise specifically ordered by the Commission, shall be made in this instant Docket No. DE 24-032 proceeding, and it is

FURTHER ORDERED, that Docket No. DE 19-142 is hereby CLOSED, as no further Commission action is deemed necessary in that proceeding; and it is

FURTHER ORDERED, that the Commission will hold a hearing in this matter at its offices located at 21 S. Fruit St., Suite 10, Concord, New Hampshire, on March 13, 2024, at 9:00 a.m. Three hours shall be allotted for this hearing; and it is

FURTHER ORDERED, that the New Hampshire Department of Energy, and any other interested party, file its written statement of position regarding the Burgess Plant Settlement-related issues delineated herein no later than the close of business on March 11, 2024; and it is

FURTHER ORDERED, that any entity or individual may petition to intervene and seek to be admitted as a party in this proceeding. Each party has the right to have an attorney represent the party at the party's own expense; and it is

FURTHER ORDERED, that, consistent with N.H. Admin. R., Puc 203.17 and Puc 203.02, any entity or individual seeking to intervene in the proceeding shall file with the Commission a petition to intervene with copies sent to Eversource and any other parties on the service list, on or before March 7, 2024. The petition shall state the facts demonstrating how the petitioner's rights, duties, privileges, immunities, or other substantial interests may be affected by the proceeding, consistent with N.H. Code Admin. Rules, Puc 203.17; and it is

FURTHER ORDERED, that any party objecting to a petition to intervene make said objection on or before March 12, 2024; and it is

FURTHER ORDERED, that parties shall file any proposed exhibits, written testimony, motions, or other documents intended to become part of the record in this proceeding with the Commission. Pursuant to the secretarial letter issued on March 17, 2020, which is posted on the Commission's website at <https://www.puc.nh.gov/Regulatory/Secretarial%20Letters/20200317-SecLtr-Temp-Changes-in-Filing-Requirements.pdf>, all Commission rules requiring the filing of paper copies are suspended until further notice. Parties may elect to submit any filing in electronic form unless otherwise ordered by the Commission. Filings will be considered filed as of the time the electronic copy is received by the Commission; and it is

FURTHER ORDERED, that routine procedural inquiries may be made by contacting the Commission's Clerk's Office at (603) 271-2431 or ClerksOffice@puc.nh.gov. All requests to the Commission should be made in a written pleading filed with the Commission. Unless otherwise authorized by law, *ex parte* communications are prohibited; and it is

FURTHER ORDERED, under N.H. Admin. R., Puc 203.12, Eversource shall notify all entities and individuals desiring to be heard at this hearing by publishing a

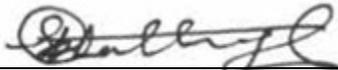
copy of this order of notice on its website no later than two business days after the date of issue, such publication to be documented by affidavit filed with the Commission on or before March 7, 2024. In addition, the Clerk shall publish this order of notice on the Commission's website no later than two business days after the date of issue; and it is

FURTHER ORDERED, that any hearings in this matter shall be conducted in accordance with the attached hearing guidelines.

So ordered, this Twenty-eighth Day of February 2024.



Daniel C. Goldner
Chairman



Pradip K. Chattopadhyay
Commissioner



Carleton B. Simpson
Commissioner

Service List - Docket Related

Docket#: 24-032

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