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September 12, 2022

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

Re: DE 19-142; Public Service Company of New Hampshire d/b/a Eversource Energy;
Rate Recovery re Power Purchase Agreement with Berlin Station LLC; Department of
Energy Comments on Order No. 26,665 and Subsequent Motion and Objection

Dear Chairman Goldner:

On August 11, 2022, the Public Utilities Commission (Commission) issued Order No. 26,665 (“the Order”) in which the Commission ordered Burgess BioPower Plant and its affiliates (hereinafter “Berlin Station” - for ease of reference) to make their capital and operating cost and profit and loss records available to the Department of Energy (Department) and the Office of Consumer Advocate (OCA). The Order further required Berlin Station to file those materials with the Commission at the same time that Berlin Station filed the materials with the Department and OCA. Order No. 26,665 at 2-3. The Commission ordered the Department to conduct an audit of the plant’s costs and revenues, and to file a copy of the audit with Commission at the same time that it files that audit with the House Science, Technology, and Energy Committee and Senate Energy and Natural Resources Committee of the General Court. *Id.* at 3-4.

Berlin Station filed a motion to clarify and/or to modify Order No. 26,665 on September 2, 2022. OCA filed an objection to Berlin Station’s motion on September 6 and then withdrew its objection on September 8, waiving its opportunity to review Berlin Station’s records.

Respectfully, the Department does not fully agree with the Commission’s order and believes Berlin Station’s motion is moot. Regarding the Commission’s order, the Department interprets SB 271¹ as requiring Berlin Station to make its records available to the Department and the OCA, and as requiring the Department to provide the resulting audit to the legislature, not to the Commission. The legislation gives the Commission no authority to demand copies of or to review Berlin Station’s financials. Indeed, SB 271 specifically repealed 2018 N.H. Law 340:2, which previously required Berlin Station to

¹ 2022 N.H. Law 275:1, commonly known as SB 271.

provide the Commission with its records upon request. Last, it is unclear what the Commission would do with Berlin Station's financial records given that Berlin Station is not a regulated utility, and SB 271 does not direct the Commission to make any determinations based upon such a review.

SB 271 thus limits the Commission's role only to altering its prior orders in the specific manner prescribed by the legislature. The Department respectfully suggests that the language prescribed by the legislature does not include a requirement that Berlin Station provide copies of its financial records to the Commission, or that the Department provide the Commission with a copy of the resulting audit, because the audit appears to be for the General Court's use in deciding whether to take further legislative action concerning the facility.²

Further, the Department does not believe that Berlin Station's motion, which seeks to clarify that it need not file books and records with the Commission (Motion at 3) is needed. The Order requires Berlin Station to file records with the OCA and the Commission at the same time it files records with the Department. Pursuant to the legislative directive in Section II of SB 271, the Department has already requested that Berlin Station make books and records available to the Department for review, and Berlin Station to date has been compliant with that request. Berlin Station has not, however, filed any documents with the Department. Nor does the Department, at this time, plan to accept any filings. Thus, Berlin Station's motion is moot.

Consistent with the Commission's *Temporary Changes in Filing Requirements* (March 17, 2020) this letter is being filed only in electronic form.

Sincerely,

/s/ *Paul B. Dexter*

Paul B. Dexter
Staff Attorney/Hearings Examiner

Cc: Service List

² The Department plans, however, to provide the Commission with any public portions of its final audit report when it provides that report to the legislature.