

**THE STATE OF NEW HAMPSHIRE  
BEFORE THE  
PUBLIC UTILITIES COMMISSION**

**Docket No. DE 19-142**

**Public Service Company of New Hampshire  
d/b/a Eversource Energy**

**Rate Recovery of Costs in Excess of the Cumulative Reduction Cap  
Under the Power Purchase Agreement with Berlin Station, LLC**

**MOTION**

**FOR APPROVAL OF FIRST AMENDMENT TO THE  
AMENDED AND RESTATED POWER PURCHASE AGREEMENT**

Pursuant to RSA 374:57, 2018 N.H. Laws Chapter 340 (“SB 577”), and Rules Puc 102.08 and 203.07, Public Service Company of New Hampshire d/b/a Eversource Energy (“PSNH,” “Eversource,” or “the Company”) requests the Public Utilities Commission (“Commission”) to review and approve the First Amendment to the Amended and Restated Power Purchase Agreement (the “First Amendment to the PPA”) entered into by PSNH and Berlin Station, LLC and to provide for recovery of the costs of that First Amendment to the PPA by PSNH from retail customers via a non-bypassable charge.

In support of the Motion, PSNH says the following:

1. In Docket No. DE 10-195, “Public Service Company of New Hampshire - Petition for Approval of Power Purchase Agreement with Laidlaw Berlin Biopower, LLC,” the Commission approved the “Amended and Restated Power Purchase Agreement” under which PSNH purchases certain

energy, capacity, and renewable products from the Burgess BioPower plant located in Berlin, New Hampshire. *See* Order Nos. 25,213 (April 18, 2011) and 25,239 (June 23, 2011).

2. During its 2018 session, the General Court enacted Senate Bill (“SB”) 577, “AN ACT requiring the public utilities commission to revise its order affecting the Burgess BioPower plant in Berlin, prohibiting the import of certain liquid fuels, and relative to the production of useful thermal energy.” That legislation was signed into law by Governor Sununu on June 18, 2018, became 2018 N.H. Laws Chapter 340, and in relevant part took effect on July 1, 2018. Pursuant to that law the Commission was required to amend Order No 25,213 “to suspend the operation of the cap on the cumulative reduction factor as set forth on page 97 of its Order for a period of 3 years from the date the operation of the cap would have otherwise taken effect.” Laws 2018, 340:2, I.
3. By Order of Notice dated August 2, 2018 in Docket No. DE 10-195, the Commission initiated its process of determining the actions necessary to comply with SB 577. As a result of that process, the Commission issued Order No. 26,198 on December 5, 2018. That Order amended Order No. 25,213 per the statutory requirement found in Laws 2018, 340:2.
4. On August 30, 2019, the Commission issued an Order of Notice creating Docket No. DE 19-142, “PSNH - Rate Recovery of Costs in Excess of the Cumulative Reduction Cap Under the Power Purchase Agreement with Berlin Station, LLC” relating to, *inter alia*, issues related to whether, and if so under what rate recovery mechanism, Eversource may recover from ratepayers the over-market costs of electric energy purchased under the PPA with Berlin Station in excess of the \$100 million cap while operation of the cap is suspended.

5. A prehearing conference and Technical Session were held in Docket No. DE 19-142 on September 24, 2019. As a result of that Technical Session, by letter dated October 16, 2019, PSNH provided the Commission with information regarding how it would treat amounts in excess of the cumulative reduction factor (“CRF”) cap until such time that the Parties to the existing PPA negotiated an amendment thereto. On October 18, 2019, Burgess BioPower provided its views on what the legislature intended in passing SB 577 with respect to rate recovery for any amount in excess of \$100 million that accrues in the CRF during the three year suspension mandated by SB 577.
  
6. Today, November 19, 2019, an amendment to the existing PPA, the “First Amendment to the PPA,” was signed by both Berlin Station, LLC and PSNH. A copy of the First Amendment to the Amended and Restated Power Purchase Agreement is attached hereto as Attachment 1. This First Amendment to the PPA is intended to implement SB 577.
  
7. The First Amendment to the PPA makes two substantive changes to the existing PPA. The first change, in subparagraph 2(a), implements the changes intended by SB 577. Section 6.1.4(c) of the existing PPA is changed to suspend the operation of the cap on the cumulative reduction factor for a period of 3 years from the date the operation of the cap would have otherwise taken effect, as directed by SB 577. The second change, in subparagraph 2(b), resolves a property tax issue regarding substation property in Berlin owned by PSNH but dedicated solely to the operation of the Burgess BioPower facility.
  
8. Because the First Amendment to the PPA involves the purchase of energy by PSNH over a time period in excess of one year, RSA 374:57 requires PSNH to promptly furnish a copy of the agreement to the commission. This statute allows the commission to “disallow, in whole or part,

any amounts paid by such utility under any such agreement if it finds that the utility's decision to enter into the transaction was unreasonable and not in the public interest.”

9. As a result of RSA 374:57, the First Amendment to the PPA contains the following condition precedent to its becoming effective in Paragraph 3(a):

This First Amendment is conditioned upon and shall not become effective unless and until the New Hampshire Public Utilities Commission approves this First Amendment without material modification or conditions with findings that PSNH’s decision to enter into this First Amendment was reasonable and in the public interest, and that PSNH shall be allowed to recover all costs of the amended Agreement from customers via a non-bypassable rate mechanism; which approval shall be final and not subject to appeal or rehearing and shall be acceptable to PSNH in its sole discretion (the “Amendment Regulatory Approval”).

10. PSNH hereby requests that the Commission:
  - a. approve the First Amendment to the PPA without material modification or conditions;
  - b. make findings that PSNH’s decision to enter into this First Amendment was reasonable and in the public interest; and,
  - c. order that PSNH shall be allowed to recover all costs of the amended Agreement from customers via a non-bypassable rate mechanism.

11. The testimony of Mr. Frederick B. White of Eversource Energy is being filed concurrently in support of this Motion.

12. Burgess BioPower, LLC, concurs with this Motion. The Office of Consumer Advocate opposes this Motion. Commission Staff takes no position on the Motion.

**WHEREFORE**, Eversource respectfully requests that the Commission:

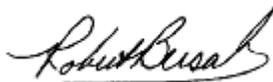
1. approve the First Amendment to the PPA without material modification or conditions;
2. make findings that PSNH's decision to enter into this First Amendment was reasonable and in the public interest;
3. order that PSNH shall be allowed to recover all costs of the amended Agreement from customers via a non-bypassable rate mechanism; and,
4. grant such other and further relief as may be just and proper.

Dated at Manchester, New Hampshire this 19<sup>th</sup> day of November, 2019.

Respectfully submitted,

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

By Its Attorney



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**Certificate of Service**

I hereby certify that on November 19, 2019, copies of the foregoing Motion and accompanying testimony have been forwarded to the parties listed on the Commission's service list in this docket.

A handwritten signature in cursive script, appearing to read "Robert Bersak".

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Robert A. Bersak