

ATTACHMENT A
SETTLEMENT AGREEMENT

EXHIBIT
#7
DE 19-142

THE STATE OF NEW HAMPSHIRE

BEFORE THE

PUBLIC UTILITIES COMMISSION

**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**

Docket No. DE 19-142

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is by and among Public Service Company of New Hampshire d/b/a Eversource Energy (“PSNH” or the “Company”); the Staff of the New Hampshire Public Utilities Commission (“Staff”); the Office of the Consumer Advocate (“OCA”); and Burgess Biopower, LLC (“Burgess”) (all collectively referred to as the “Settling Parties”), with the intent of resolving the issues discussed herein. This Settlement Agreement constitutes the recommendation of the Settling Parties with respect to the Commission's approval of an amendment (“Amended PPA”) to a power purchase agreement (“PPA”) between PSNH and Burgess originally approved by the Commission in DE 10-195, in Order No. 25,213 issued on April 18, 2011, and subsequently amended by the Commission in Order No. 26, 198 issued on December 5, 2018.

I. INTRODUCTION AND PROCEDURAL HISTORY

This Agreement is the Parties’ accord to implement 2018 N.H. Laws, Chapter 340 (“SB 577”) relative to the power generation facility operated by Burgess in Berlin (the “Berlin Facility”). SB 577 required the Commission to suspend the operation of the cap on the so-called cumulative reduction factor (“CRF”) as approved in DE 10-195 “for a period of three years from the date the operation of the cap would have otherwise taken effect.” The procedural history leading up to this Agreement has been set forth by the Commission in its August 2, 2018 Order of Notice in DE 10-195, and the Order of Notice dated August

30, 2019 and Supplemental Order of Notice dated December 12, 2019, in DE 19-142.

II. SETTLEMENT TERMS

The Settling Parties agree that the “First Amendment to Amended and Restated Power Purchase Agreement”, filed with the Commission on November 19, 2019 under the instant docket, along with a Tariff revision (to the tariff on file with this Commission under Docket 17-096) attached hereto as Attachment ‘A’, is reasonable and in the public interest and should be approved by the Commission. All terms are interdependent, and each Settling Party's agreement to each individual term is dependent upon agreement with all of the terms.

A. Effective Date

Effectiveness of this Agreement is conditioned upon receipt of a final and unappealable decision of the Commission (i) finding that PSNH's decision to enter into the Amended PPA was reasonable and in the public interest; (ii) ordering that PSNH shall be allowed to recover all costs of the Amended PPA from customers via the non-bypassable rate mechanism set forth in this Agreement; and (iii) approving this Agreement as presented. As set forth in this Agreement, upon receipt of such a final, unappealable approval, the economic impact of this Agreement shall be implemented retroactive to December 1, 2019, which was “the date the operation of the cap would have otherwise taken effect” as set forth in SB 577, and payments under the PPA and charges to customers shall be reconciled as necessary.

B. Rate Recovery Rate Impacts

The impact on customer rates of this Agreement on an annual basis is estimated to be an increase in the range of approximately \$20 million to \$25 million. This rate impact will depend upon actual operations of the Berlin Facility, the actual market prices for energy, the actual energy deliveries of PSNH.

After the end of the 3 year period starting on December 1, 2019 and ending on November 30, 2022, under the terms of Section 6.1.4 (c) of the Amended PPA, the amount that the CRF is in excess of One Hundred Million Dollars (\$100,000,000), such excess (“Excess Cumulative Reduction”) will be credited against amounts otherwise due for Energy delivered to PSNH during the subsequent Operating Year until such Excess Cumulative Reduction is eliminated.

Cost recovery by PSNH will be made via an equal cents per kilowatt-hour charge that will be included in the Stranded Cost Recovery Charge (in a manner akin to rate treatment of Regional Greenhouse Gas Initiative (“RGGI”) charges). An amended Tariff provision is attached as Attachment 2. Excess Cumulative Reduction credited to PSNH pursuant to Section 6.1.4(c) of the PPA shall likewise be credited to PSNH customers, with a return, in due course.

III. ADDITIONAL PROVISIONS

A. Testimony, No Admissions, No Modification of Material Terms

The Settling Parties agree that all testimony and supporting documentation may be admitted as full exhibits for purposes of consideration of this Agreement. The agreement to admit all direct testimony without challenge does not constitute agreement by the Settling Parties that the content of the written testimony filed on behalf of the other Parties is accurate, nor is it indicative of what weight, if any, should be given to the views of any witness. Furthermore, in light of the fact that they have entered into this Agreement, the Settling Parties agree to forego cross-examining witnesses regarding their pre-filed testimony and, therefore, the admission into evidence of any witness's testimony or supporting documentation shall not be deemed in any respect to constitute an admission

by any party to this Agreement that any allegation or contention in this proceeding is true or false, except that the sworn testimony of any witness shall constitute an admission by such witness.

This Agreement is expressly conditioned upon the Commission's acceptance of all of its provisions without change or condition. All terms are interdependent, and each Settling Party's agreement to each individual term is dependent upon all Settling Parties' agreement with all of the terms. If such complete acceptance is not granted by the Commission, or if acceptance is conditioned in any way or subject to any material modification, the Settling Parties shall have the opportunity to amend or terminate this Agreement or to seek reconsideration of the Commission's decision or condition. If this Agreement is terminated, it shall be deemed to be withdrawn and shall be null and void and without effect, and shall not constitute any part of the record in this proceeding nor be used for any other purpose. The Settling Parties agree to support approval of this Agreement before the Commission. The Settling Parties agree that they shall not oppose this Agreement before any regulatory agencies or courts before which this matter is brought, but shall take all such action as is necessary to secure approval and implementation of the provisions of this Agreement.

The Commission's acceptance of this Agreement does not constitute continuing approval of or precedent regarding any particular issue in this proceeding, but such acceptance does constitute a determination that, as the Settling Parties believe, the provisions set forth herein are just and reasonable. The discussions which have produced this Agreement have been conducted on the understanding that all offers of settlement and discussion relating thereto are and shall be privileged, and shall be without prejudice to the position of any party or participant representing any such offer or participating in any such

discussion, and are not to be used in any manner in connection with this proceeding, any further proceeding or otherwise.

B. Resolution of Legal Issues

1. Effect on Briefing Schedule. The Settling Parties agree that this Agreement is intended to resolve legal issues raised by the Commission's Supplemental Order of Notice issued on December 12, 2019, and on which the Commission requested initial briefs by the parties to the docket by January 2, 2020 and reply briefs by January 9, 2020. In light of this Agreement, the Settling Parties believe that briefing would not provide any material benefit in the absence of contested issues. Moreover, Settling Parties agree that, to the extent that any of the statutory or constitutional standards raised in the Supplemental Order of Notice do apply to the Amended PPA, the terms of this Agreement satisfy those standards pursuant to Puc 203:15(d). In the event that the Commission does not approve the Agreement, or makes some material modification or imposes some condition as described in III. A, above, causing any party to withdraw from the Agreement, the Settling Parties reserve the right to submit briefs on a schedule to be determined by the Commission. If the Commission determines that it is unable to approve this Settlement Agreement absent briefing by the parties, the Settling Parties agree that such a determination does not constitute a material modification to or imposing a condition on the Agreement, and will not affect the terms of the Agreement.

2. Standard of Review. The Settling Parties agree that the Commission should review the proposed PPA to determine that it is consistent (a) with the Legislature's directives in SB 577; b) with the provisions of the Commission's Order 26,198, issued on December 5, 2018 implementing SB 577; and c) with the public interest standard. With respect to (a) and (b) the Settling Parties agree that the Amended PPA is consistent with the

intent of SB 577 and the Commission's Order suspending operation of the CRF for a period of three years. The Settling Parties further agree that the Legislature's findings in SB 577 recognize the importance of the Burgess biomass facility "to the energy infrastructure of the state" and further recognize the facility's importance in meeting the state's "goals of fuel diversity, capacity, and sustainability." SB 577. The Settling Parties agree that, because the Amended PPA is consistent with the legislative findings, policy goals and purposes intended by SB 577, and that because the Amended PPA comports with the directives in the Commission's Order 26,198 in DE 10-195 issued on December 5, 2018, the Amended PPA is consistent with the public interest.

3. Production of Books and Records. The Settling Parties agree that, in light of this Agreement, and, as discussed above, because the Amended PPA implements the important policy purposes identified by the Legislature and is consistent with the Commission's Order in DE 10-195, it is unnecessary for the Commission to exercise the discretionary authority afforded to it by SB 577 to order the disclosure of Berlin Station LLC's books and records.

IN WITNESS WHEREOF, the Settling Parties have caused this Agreement to be duly executed in their respective names by their agents, each being fully authorized to do so on behalf of their principal.

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE D/B/A EVERSOURCE ENERGY

By: 
Robert A. Bersak, Esq.
Chief Regulatory Counsel

Date: 12-31-2019

NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION STAFF

By: _____
F. Anne Ross, Esq.
Staff Attorney

Date: _____

NEW HAMPSHIRE OFFICE OF THE CONSUMER ADVOCATE

By: _____
D. Maurice Kreis, Esq.
Consumer Advocate

Date: _____

BURGESS BIOPOWER, LLC

By: _____
Carol J. Holahan, Esq.
Counsel

Date: _____

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE D/B/A EVERSOURCE ENERGY

By: _____
Robert A. Bersak, Esq.
Chief Regulatory Counsel

Date: _____

NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION STAFF

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F. Anne Ross, Esq.
Staff Attorney

Date: 12/31/2019

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Robert A. Bersak, Esq.
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NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION STAFF

By: _____
F. Anne Ross, Esq.
Staff Attorney

Date: _____

NEW HAMPSHIRE OFFICE OF THE CONSUMER ADVOCATE

By:  _____
D. Maurice Kreis, Esq.
Consumer Advocate

Date: Dec. 31, 2019

BURGESS BIOPOWER, LLC

By: _____
Carol J. Holahan, Esq.
Counsel

Date: _____

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE D/B/A EVERSOURCE ENERGY

By: _____
Robert A. Bersak, Esq.
Chief Regulatory Counsel

Date: _____

NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION STAFF

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F. Anne Ross, Esq.
Staff Attorney

Date: _____

NEW HAMPSHIRE OFFICE OF THE CONSUMER ADVOCATE

By: _____
D. Maurice Kreis, Esq.
Consumer Advocate

Date: _____

BURGESS BIOPOWER, LLC

By: Carol J. Holahan
Carol J. Holahan, Esq.
Counsel

Date: 12/31/19

Attachment A

Revised Tariff Provision

27. Stranded Cost Recovery Charge

The Stranded Cost Recovery Charge (SCRC) is the portion of the unbundled retail delivery service bill that is a non-bypassable charge as provided by RSA 369-B:4,IV and RSA 374-F:3, XII to recover the portion of the Company's Part 1 and Part 2 Stranded Costs that are allowed by the Settlement Agreement. The SCRC include the RRB Charge defined in RSA Chapter 369-B, overmarket or under-market IPP and Power Purchase Agreement costs, Non-Securitized Stranded Costs, and other costs and expenses allowed or as authorized by the Commission.

Part 1 of the SCRC is the RRB Charge, and is the source of payment for Rate Reduction Bonds issued pursuant to RSA Chapter 369-B. One or more special purpose financing entities shall own the right to receive all collections in respect to the Part 1 charge. The Company will collect the RRB Charge in Part 1 of the SCRC on behalf of such special purpose financing entities. The special purpose financing entities' ownership of the RRB Charge recovered via Part I of the SCRC will be reflected by an appropriate notation on customers' bills. Part 1 of the SCRC will be billed until the rate reduction bonds issued by the special purpose financing entities and all on-going RRB Costs are paid in full.

Part 1 of the SCRC shall be adjusted as necessary via the True-Up mechanism approved by the

Commission in its Order No. 26,099 in Docket No. DE 17-096 (most recent version on file with this Commission), and such changes in Part 1 shall become effective as set forth in that Order.

Part 2 will recover all other non-securitized stranded costs and charges as approved by the Commission and will continue for as long as there are such costs to be recovered by the Company.

The SCRC shall be non-bypassable per RSA 369-B:4, IV and RSA 374-F:3, XII, and shall be collected from each retail customer of the Company. If a retail customer located in the Company's service territory purchases or otherwise obtains retail electric service from any person other than the Company, including, without limitation, any successor referred to in RSA 369-B:8, the servicer or such new electricity service provider or successor shall collect the SCRC, from the retail customer by or on behalf of the Company and remit those revenues to the Company as a condition to the provision of retail electric service to such retail customer. Any retail customer that fails to pay the SCRC shall be subject to disconnection of service to the same extent that such customer would, under applicable law and regulations, be subject to disconnection of service for failure to pay any other charge payable to the Company.

The revenue requirement necessary to recover all Part 1 and Part 2 stranded costs will be allocated among rate classes as follows:

Rate Class	Percentage of Total Revenue Requirement
Residential Service (R, R-OTOD)	48.75
General Service (G, G-OTOD)	25.00
Primary General Service (GV, B*)	20.00
Large General Service (LG, B**)	5.75
Outdoor Lighting Service (OL, EOL)	0.50

*Rate B customers who would qualify for Rate GV except for their own generation.

**Rate B customers who would qualify for Rate LG except for their own generation.

The actual SCRC will vary by the rate schedule, may vary by separately metered rate options contained in certain rate schedules, may vary by time of use, and may include demand- as well as kWh-based charges. The Company, every six months, shall compare the amount to be recovered through the SCRC, as defined under the Settlement Agreement and this Tariff with the revenue received from the billing of the SCRC. Any difference between the amount to be recovered by Part 2 of the SCRC during any six month period and the actual revenue received during that period shall be refunded or recovered by PSNH with a return during the subsequent six month period by reducing or increasing Part 2 of the SCRC for the subsequent six month period. The return will be calculated using the Stipulated Rate of Return set forth in the Settlement Agreement.

If any customer class is materially reduced or consolidated to zero, its applicable allocation factor will be reallocated on a pro-rata basis between remaining rate classes based on the then current allocation responsibility.

The SCRC also includes the Regional Greenhouse Gas Initiative (“RGGI”) refund as required by RSA 125-O:23,II and Order No. 25,664 dated May 9, 2014, which directs the Company to refund RGGI auction revenue it receives to its Customers through the SCRC.

The SCRC also includes the costs of implementing 2018 N.H. Laws, Chapter 340, “AN ACT requiring the public utilities commission to revise its order affecting the Burgess BioPower plant in Berlin, ... ” per Order No. _____ (“Ch. 340” costs). The revenue requirement necessary to recover Ch. 340 stranded costs will be allocated on an equal cents/kWh basis for all customer classes. Any difference between the amount of Ch. 340 costs to be recovered during any six month period and the actual revenue received during that period shall be refunded or recovered by PSNH with a return during the subsequent six month period by reducing or increasing Ch. 340 costs for the subsequent six month period. The return will be calculated using the Stipulated Rate of Return set forth in this tariff’s Settlement Agreement under Docket No. DE 17-096 on file with this Commission. Ch. 340 costs will continue for as long as there are such costs to be recovered from or refunded to customers by the Company.

The overall average SCRC by rate class and by component effective February 1, 2020 through July 31, 2020 are as follows:

Rate Class	Part 1 C/kWh	Part 2 C/kWh	Ch. 340 C/kWh	RGGI C/kWh	Total C/kWh
Residential Service					
General Service					
Primary General Service					
Large General Service					
Outdoor Lighting Service					

27. Stranded Cost Recovery Charge

The Stranded Cost Recovery Charge (SCRC) is the portion of the unbundled retail delivery service bill that is a non-bypassable charge as provided by RSA 369-B:4,IV and RSA 374-F:3, XII to recover the portion of the Company's Part 1 and Part 2 Stranded Costs that are allowed by the Settlement Agreement. The SCRC include the RRB Charge defined in RSA Chapter 369-B, overmarket or under-market IPP and Power Purchase Agreement costs, Non-Securitized Stranded Costs, and other costs and expenses allowed or as authorized by the Commission.

Part 1 of the SCRC is the RRB Charge, and is the source of payment for Rate Reduction Bonds issued pursuant to RSA Chapter 369-B. One or more special purpose financing entities shall own the right to receive all collections in respect to the Part 1 charge. The Company will collect the RRB Charge in Part 1 of the SCRC on behalf of such special purpose financing entities. The special purpose financing entities' ownership of the RRB Charge recovered via Part I of the SCRC will be reflected by an appropriate notation on customers' bills. Part 1 of the SCRC will be billed until the rate reduction bonds issued by the special purpose financing entities and all on-going RRB Costs are paid in full.

Part 1 of the SCRC shall be adjusted as necessary via the True-Up mechanism approved by the Commission in its Order No. 26,099 in Docket No. DE 17-096, and such changes in Part 1 shall become effective as set forth in that Order.

Part 2 will recover all other non-securitized stranded costs and charges as approved by the Commission and will continue for as long as there are such costs to be recovered by the Company.

The SCRC shall be non-bypassable per RSA 369-B:4, IV and RSA 374-F:3, XII, and shall be

collected from each retail customer of the Company. If a retail customer located in the Company's service territory purchases or otherwise obtains retail electric service from any person other than the Company, including, without limitation, any successor referred to in RSA 369-B:8, the servicer or such new electricity service provider or successor shall collect the SCRC, from the retail customer by or on behalf of the Company and remit those revenues to the Company as a condition to the provision of retail electric service to such retail customer. Any retail customer that fails to pay the SCRC shall be subject to disconnection of service to the same extent that such customer would, under applicable law and regulations, be subject to disconnection of service for failure to pay any other charge payable to the Company.

The revenue requirement necessary to recover all Part 1 and Part 2 stranded costs will be allocated among rate classes as follows:

Rate Class	Percentage of Total Revenue Requirement
Residential Service (R, R-OTOD)	48.75
General Service (G, G-OTOD)	25.00
Primary General Service (GV, B*)	20.00
Large General Service (LG, B**)	5.75
Outdoor Lighting Service (OL, EOL)	0.50

*Rate B customers who would qualify for Rate GV except for their own generation.

**Rate B customers who would qualify for Rate LG except for their own generation.

The actual SCRC will vary by the rate schedule, may vary by separately metered rate options contained in certain rate schedules, may vary by time of use, and may include demand- as well as kWh-based charges. The Company, every six months, shall compare the amount to be recovered through the SCRC, as defined under the Settlement Agreement and this Tariff with the revenue received from the billing of the SCRC. Any difference between the amount to be recovered by Part 2 of the SCRC during any six month period and the actual revenue received during that period shall be refunded or

recovered by PSNH with a return during the subsequent six month period by reducing or increasing Part 2 of the SCRC for the subsequent six month period. The return will be calculated using the Stipulated Rate of Return set forth in the Settlement Agreement.

If any customer class is materially reduced or consolidated to zero, its applicable allocation factor will be reallocated on a pro-rata basis between remaining rate classes based on the then current allocation responsibility.

The SCRC also includes the Regional Greenhouse Gas Initiative (“RGGI”) refund as required by RSA 125-O:23,II and Order No. 25,664 dated May 9, 2014, which directs the Company to refund RGGI auction revenue it receives to its Customers through the SCRC.

The SCRC also includes the costs of implementing 2018 N.H. Laws, Chapter 340, “AN ACT requiring the public utilities commission to revise its order affecting the Burgess BioPower plant in Berlin, ... ” per Order No. _____ (“Ch. 340” costs). The revenue requirement necessary to recover Ch. 340 stranded costs will be allocated on an equal cents/kWh basis for all customer classes. Any difference between the amount of Ch. 340 costs to be recovered during any six month period and the actual revenue received during that period shall be refunded or recovered by PSNH with a return during the subsequent six month period by reducing or increasing Ch. 340 costs for the subsequent six month period. The return will be calculated using the Stipulated Rate of Return set forth in the Settlement Agreement. Ch. 340 costs will continue for as long as there are such costs to be recovered from or refunded to customers by the Company.

The overall average SCRC by rate class and by component effective ~~August 1, 2019~~ February 1, 2020 through

~~January~~ July 31, 2020 are as follows:

<u>Rate Class</u>	<u>Part 1 ¢/kWh</u>	<u>Part 2 ¢/kWh</u>	<u>Ch. 340 ¢/kWh</u>	<u>RGGI ¢/kWh</u>	<u>Total ¢/kWh</u>
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<u>Residential Service</u>					
<u>General Service</u>					
<u>Primary General Service</u>					
<u>Large General Service</u>					
<u>Outdoor Lighting Service</u>					

Rate Class	Part 1 ¢/kWh	Part 2 ¢/kWh	RGGI ¢/kWh	Total ¢/kWh
Residential Service	0.948	0.934	-0.130	1.752
General Service	0.872	0.802	-0.130	1.544
Primary General Service	0.743	0.690	-0.130	1.303
Large General Service	0.258	0.222	-0.130	0.350
Outdoor Lighting Service	1.081	0.604	-0.130	1.555