

**THE STATE OF NEW HAMPSHIRE**

**BEFORE THE  
PUBLIC UTILITIES COMMISSION**

**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**

**BERLIN STATION LLC'S MOTION FOR AN EXPEDITED STATUS CONFERENCE**

NOW COMES Berlin Station, LLC (“Berlin Station” or the “plant”) and pursuant to N.H. Code Admin. Rule Puc 203.07, hereby requests that the New Hampshire Public Utilities Commission (“Commission”) schedule a status conference in the above-captioned proceeding as expeditiously as possible, and if possible, on or before February 28, 2022. A status conference is warranted to address impending developments under the power purchase agreement (“PPA”) between Berlin Station and Eversource Energy, Inc. d/b/a Public Service Company of New Hampshire (“Eversource”) that threaten the continued financial viability of the plant and its ability to serve as an anchor economic resource in the North Country as well as a source of New Hampshire-based renewable energy and hedge for New Hampshire ratepayers against potentially increasing prices of oil and gas. The plant also provides baseload power that increases grid reliability and fuel security in the region. In particular, the conference should address the status of the PPA’s cap on the Cumulative Reduction Fund (“CRF”), which was initially inserted in the PPA at the Commission’s request, was subsequently modified by legislative and Commission

action, but could soon require operation of the plant on unsustainable terms.<sup>1</sup> In support of this motion, Berlin Station states as follows:

## **I. BACKGROUND**

1. Berlin Station is the largest generator of renewable energy in New Hampshire, producing over 500,000 megawatt-hours per year of homegrown, indigenously-sourced power at its state-of-the art biomass facility in Berlin, New Hampshire. With a capacity factor of more than 90%, Burgess reliably generates enough electricity to power 67,000 NH residences – more than 10% of the state’s total homes.

2. Beginning in 2010, Eversource negotiated a power purchase agreement with Berlin Station’s prior owners to purchase the energy, capacity, and a portion of the renewable energy certificates (“RECs”) produced by Berlin Station.

3. The development of the biomass facility and the PPA with Eversource enjoyed wide support from Eversource, the Governor, the City of Berlin, many legislators, and the four regional economic development organizations in the Berlin area.

4. According to Eversource, the PPA was represented by the company’s intent to “affirmatively take action to meet...renewable resource, environmental, and climate action objectives.” *See* Testimony of G. Long, DE-10-195 at 4; *see also* Testimony of T. Large, DE 10-195 at 8, 12, and 13 (PPA will reduce reliance on fossil fuels, add fuel diversity through use of local renewable fuels and resource, and enhance energy independence).

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<sup>1</sup> The original parties to the PPA were Public Service Company of New Hampshire and Laidlaw Berlin Power. Newco Energy, LLC purchased Laidlaw’s interests in the project and all rights it had under any agreements that were transferred to Berlin Station.

In addition, it was widely understood that the PPA provided significant economic benefits in the form of jobs and economic activity for the North Country and the state as a whole. *See* Testimony of L. Shapiro, DE 10-195 at 17 (“operation and maintenance of [Berlin Station]...where an ongoing fuel source is indigenously grown and supplied, can therefore play a very valuable role in creating and sustaining higher than average paying jobs, revitalizing economic activity in the North Country, and providing benefits statewide.”).

5. This anticipation has proven to be correct. An independent economic analysis conducted by Polecon Research in 2017 and updated in 2020 found that the plant is the source of 240 jobs statewide, has generated more than \$550 million in its operating history in economic activity, and makes annual payments to the City of Berlin of \$1.5 million in taxes and \$550,000 in REC revenue sharing.

6. The Commission approved the PPA following an extensive regulatory process. *See* Order 25,213 (April 18, 2011).

## **II. RELEVANT PPA PROVISIONS**

7. In the adjudicative proceeding relative to the PPA approval, to assuage concerns of the Commission staff and others that the price of wood might prove expensive in relation to other fuels, a provision was added that capped the CRF, or the amount of ratepayer liability for any above-market costs associated with the PPA.<sup>2</sup> The CRF calls for a comparison of the nominal price for power contained in the PPA against the localized marginal day-ahead price (“LMP”) at the Berlin Burgess node, the point of interconnection to Eversource’s transmission and

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<sup>2</sup> At the time the PPA was entered into, Eversource was legally entitled to generate its own power. The intent of the parties was to keep Berlin Station’s power price aligned with Eversource’s cost to generate power. Divestiture changed the economic feasibility of that design, with the resulting consequences of how Eversource has determined the “market clearing price” now fully apparent.

distribution system. Under the CRF, the difference between the PPA price and the LMP price, whether positive or negative, would accumulate over time in the CRF; the CRF was expected to fluctuate, depending on the daily market price of power. For example, over the course of Burgess' operating history, the Burgess Berlin nodal price averaged \$5.51/MWh less than the NH Hub price, which added \$21.4 million added to the CRF, without any additional benefit to ratepayers.

8. As provided by the PPA, any costs associated with the CRF, up to \$100 million, would be recovered through the default energy services rate. *See Testimony of T. Large, DE 10-195 at 15.* Once the CRF reached \$100 million, any amounts accruing in the CRF in excess of the \$100 million would continue to be collected by Eversource and then deducted from monthly payments to Berlin Station in the following operating year. *See Exh. A, at 6.1.4 at 12-13.*

9. In addition, the PPA gave Eversource a right of first refusal to purchase the plant, and further provided that the \$100 million in the CRF would be applied as an offset against the purchase price.<sup>3</sup> *See Exh. A at Article 7, p. 13-14.*

### **III. SUBSEQUENT EVENTS BEARING ON PPA TERMS AND OPERATION**

Following the execution of the PPA, two significant external events occurred that affect the PPA terms.

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<sup>3</sup> While Eversource still owned generating assets at the time the PPA was negotiated, Eversource's divestiture of its generation assets in accordance with Order 25,920 (July 1, 2016) now prevents the utility from owning Berlin Station. The PPA, however, provides for the transferability of that purchase option. *See Exh. A at 7.2.1*

A. Divestiture

10. In 2016, the Commission issued Order 25,920, approving Eversource's divestiture of its generation assets, which was the final piece of the restructuring of electricity in New Hampshire. *See* DE 11-250 and DE 14-238, Order 25,920 (July 1, 2016). During that proceeding, there was extensive testimony regarding the costs of the Berlin Station PPA, and how any costs associated with it should be recovered. In its Order on divestiture, the Commission ordered Eversource to continue to hold two PPAs, including its PPA with Berlin Station, and in approving the settlement agreement provided that any costs associated with the PPA would be recovered through stranded cost recovery. *See id* at 40, *quoting* Settlement Agreement at 22-23 ("Eversource shall retain Power Purchase Agreements (PPAs), including that for the Berlin Biomass Plant, and 'sell the energy and capacity from those agreements into the market, with the difference between the contract costs and the market revenues associated with the PPAs' energy and capacity to be recovered through the SCRC. RECs [Renewable Energy Credits] from such PPAs will be managed prudently to benefit customers.'").

B. Laws of 2018, ch. 340, SB 577

11. Beginning in 2018 it became clear to Berlin Station that, due to the continued depressed price of natural gas, which continued to set the wholesale electricity market LMP, the amount in the CRF was accumulating faster than anticipated, and it would be unable to continue to operate without a long-term solution to the CRF.

12. In addition, it became apparent to Berlin Station that the "node" at which the LMP price is compared is often much lower than many other wholesale market pricing locations in New England, thus causing amounts in the CRF to accrue faster than if some other pricing node were used.

13. In order to protect the continued economic viability and operation of the plant, Berlin Station sought the Legislature's support to protect the plant given its importance in producing local, renewable power and in providing significant economic benefits to Berlin and the state as whole.

14. In 2018, the Legislature passed and Governor Sununu signed SB 577, which provided the plant, which was at the time confronted with an event triggered by the PPA terms that challenged its economic viability, with a three-year period in which to find a long-term solution to certain unusual and adverse provisions of its PPA with Eversource. *See* Laws of 2018, ch. 340. The findings section of the legislation affirmatively recognized the important role Berlin Station plays in providing renewable, locally sourced power, as well as its economic contributions to the North Country. *Id.*

15. Specifically, the Legislature suspended operation of the \$100 million CRF cap for a period of three years and directed the Commission to amend its Order in DE 10-195 to reflect the Legislature's straightforward policy choice.

16. The regulatory proceeding following the passage of SB 577, which spans dockets DE 10-195 and DE 19-142, was, however, anything but straightforward. Despite clear legislative history demonstrating that the Legislature both understood and intended that the ratepayers, and not Berlin Station, would absorb the costs associated with the PPA during the three-year suspension of the CRF cap, that issue became the source of disagreement between the parties in that regulatory proceeding.

17. In the initial regulatory process, the Commission ordered formal briefing of the constitutional and statutory issues purportedly raised by SB 577. More than two months

following the submission of those briefs, the Commission issued an Order, but declined to decide the issue. *See* DE 10-195, Order 26,198 (December 5, 2018) at 9.

18. Without definitive resolution of the repayment issue from the Commission, the matter languished with no significant movement.

19. With impending financial hardship approaching, and without any of the obvious SB 577 protections intended by the Legislature in place, Berlin Station had little choice but to agree to a settlement. Despite what Berlin Station considered to be clear Legislative intent of SB 577 with respect to repayment, the terms of the settlement agreement provided that Eversource would collect the costs that accrued during the suspension period in the first instance and that Berlin Station would repay the costs in one-month installments, or 1/12<sup>th</sup> the total amount due, in the operating year beginning December 1, 2022. *See* Exh. B (PPA Amendment dated November 5, 2018). On February 18, 2020, the Commission ultimately approved the settlement agreement in Order 26,333.

20. During the three-year suspension period, Berlin Station has diligently pursued different options for achieving a long-term solution to the CRF issue. These efforts are set forth in Berlin Station's bi-annual compliance filings consistent with the Commission's directives in Order 23,333 in docket DE 19-142.

21. According to a January 11, 2022 filing by Eversource in this docket, the current amount that has accrued as of December 31, 2021, is \$50,717,715.54. In that same filing, Eversource estimated that by the end of the three-year period, the total amount will be approximately \$58,880,711. Because the ultimate amount in the CRF is based on a market price compared to the PPA price, that amount could increase or decrease before the November repayment deadline, but in any event is not expected to be less than \$50 million.

22. Repayment of the approximately \$50-\$60 million beginning in the operating year commencing December 1, 2022 will create an extreme financial hardship for Berlin Station and threatens the continued viability of the plant when Eversource deducts those amounts in 1/12<sup>th</sup> installments from monthly payments to Berlin Station in the following operating year. *See* Exh. A at 6.1.4 at 12-13.

23. A status conference is warranted in order to discuss the resolution of the issues in this docket, including:

(a) the payment of any amount in excess of \$100 million that has accumulated in the CRF during the three-year suspension period, and any available alternatives with respect to this payment;

(b) whether, in light of the divestiture, reconsideration of the PPA terms is warranted; and

(c) whether the terms of the PPA can and should be revised in a way that balances, on the one hand, any near-term and potential long-term costs to ratepayers, and on the other hand, protecting an important economic anchor for the North Country as well as a source of native renewable energy, fuel diversity, regional fuel security, and grid reliability.

WHEREFORE, Berlin Station respectfully requests that this Commission:

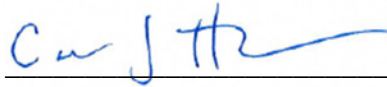
A. Schedule a status conference; and



B. Grant such further relief as may be just and proper.

Respectfully Submitted,

BERLIN STATION, LLC,  
By its attorneys,



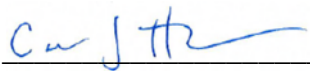
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Carol J. Holahan, Esq.  
NH Bar No. 6584  
FOLEY HOAG LLP  
155 Seaport Boulevard  
Boston, Mass. 02210-2600  
617-832-1000  
[cholahan@foleyhoag.com](mailto:cholahan@foleyhoag.com)

Dated: February 8, 2022

**Certificate of Service**

I hereby certify that a copy of the foregoing Berlin Station LLC's Motion for an Expedited Status Conference has on this been served by electronic mail to the service list in DE 19-142 on February 8, 2022. Consistent with the Commission's Secretarial Letter dated March 17, 2020, hard copies will not be delivered to the Commission.

By:   
Carol J. Holahan