

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

Docket No. DE 22-XXX

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

**PETITION TO OPEN NEW DOCKET FOR CONSIDERATION OF THE SECOND
AMENDMENT TO THE POWER PURCHASE AGREEMENT WITH BERLIN
STATION, LLC**

Pursuant to Order No. 26,665, RSA 374:57, 2022 N.H. Laws, ch. 275 and the New Hampshire Code of Administrative Rules Puc 203.06, Public Service Company of New Hampshire d/b/a Eversource Energy (“PSNH,” “Eversource,” or “the Company”) submits this petition to the Public Utilities Commission (“Commission”) to review and approve the Second Amendment to the Amended and Restated Power Purchase Agreement (the “Second Amendment”) entered into by PSNH and Berlin Station, LLC and to provide for recovery of the costs of that Second Amendment to the PPA by PSNH from retail customers via the non-bypassable charge of the Chapter 340 adder in the Company’s Stranded Cost Recovery Charge (“SCRC”).

In support of this petition, PSNH states as follows:

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 (the “Original PPA”). *See* Order Nos. 25,213 (April 18, 2011) and 25,239 (June 23, 2011).

2. In 2018, the Legislature passed 2018 N.H. Laws, ch. 340 (a.k.a. SB 577). The Legislature found that, “the continued operation of the Burgess BioPower plant in Berlin is important to the energy infrastructure of the state of New Hampshire and important for the attainment of renewable energy portfolio standard goals of fuel diversity, capacity, and sustainability.” 2018 N.H. Laws, ch.340:1.

3. 2018 N.H. Laws, ch. 340 required the Commission to “amend its Order No. 25,213 (Docket DE 10-195) 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.” 2018 N.H. Laws, ch. 340:2.

4. In Order No. 26,198 dated December 5, 2018, the Commission amended its Order No. 25,213 to include the following provision: “Amendment made December 5, 2018, as required by Laws of 2018, ch.340: Operation of the cap shall be suspended for three years from the date on which the cumulative amount reaches \$100 million.” Order No. 26,198 at 9.

5. On November 19, 2019, the Parties executed and delivered the First Amendment to Amended and Restated Power Purchase Agreement (the “First Amendment”). The First Amendment was subsequently filed with the Commission in Docket DE 19-142 to implement SB 577 and amend the terms of the Original PPA.

6. In Order No. 26,333 dated February 18, 2020, the Commission found that “cost recovery by Eversource of the over-market costs during the three-year suspension period through a non-bypassable equal cents per kilowatt-hour charge is reasonable and in the public interest” and approved the First Amendment in Docket DE 19-142. (Order 26,333 at 8). (the Original PPA, as amended by the First Amendment, is hereinafter referred to as the “Agreement”).

7. In 2022, the Legislature adopted N.H. Laws, ch. 275 (SB 271). The Legislature found that, “the continued operation of the Burgess BioPower plant in Berlin: (a) is desirable to the energy infrastructure of the state of New Hampshire; (b) is a source of indigenously-sourced, reliable baseload power that contributes to regional fuel security and reliability of the regional electricity grid; (c) is important for the attainment of renewable energy portfolio standard goals of fuel diversity, capacity, sustainability and energy independence; (d) is significant to the continued health of New Hampshire’s forests; (e) provides valuable support to the timber industry; and (f) is a contributor of jobs and to the economy of both the North Country and the state as a whole.” 2022 N.H. Laws, ch. 275:1.

8. 2022 N.H. Laws, ch. 275 requires the Commission to “reopen its Docket DE 10-195 and forthwith revise its Order No. 25,213 and its Order No. 26,198 and Order No. 26,333” and further requires the Commission “to extend the suspension of the operation of the cap on the cumulative reduction factor as set forth on page 97 of Order No. 25,213 for an additional period of one year from the date the operation of the cap would have otherwise taken effect under Order No. 25,213 and Order No. 26,198 and Order No. 26,333 in Docket DE 19-142 regarding cost recovery for costs in excess of the cap to apply during the additional period in which the cap is extended.” 2022 N.H. Laws, ch. 275:1.

9. On August 11, 2022, the Commission issued Order No. 26,665, amending the orders required by 2022 N.H. Laws, ch. 275, and directed PSNH to file this petition requesting that the Commission open a new docket to review and approve the necessary changes and revisions to the Agreement, which comprise the Second Amendment. Specifically, the Commission stated “[i]t is our expectation that Burgess and Eversource will update their PPA to incorporate these changes and submit these revisions for our review and approval imminently,

similar in manner to the proceeding in Docket No. DE 19-142, conducted in response to comparable prior directives from the General Court. . . [w]e will act expeditiously regarding this future petition, which will be reviewed in a separate, newly created Commission docket.” (Order 26,665 at 3, internal citation omitted).

10. On August 18, 2022, the Second Amendment was signed by both Berlin Station, LLC and PSNH to effectuate the findings of the Legislature in 2022 N.H. Laws, ch. 275 and Commission Order No. 26,665. A copy of the Second Amendment is attached hereto as Attachment 1.

11. In this petition, PSNH offers the signed Second Amendment for Commission review and requests approval via Order *nisi*, as the Second Amendment is merely a vehicle through which to execute a legislative mandate, and there are no contested issues in this matter.

12. The Second Amendment makes one substantive change to the Agreement, consistent with the new legislation. That change is reflected in subparagraph 2(a) of Exhibit B and implements the change intended by 2022 N.H. Laws, ch. 275. Section 6.1.4(c) of the Agreement is changed to suspend the operation of the cap on the cumulative reduction factor for a period of one year from the date the operation of the cap would have otherwise taken effect.

13. Because the Second Amendment 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.”

14. Consistent with RSA 374:57, the Second Amendment contains the following condition precedent to its becoming effective in Paragraph 3(a):

This Second Amendment is conditioned upon and shall not become effective unless and until the New Hampshire Public Utilities Commission approves this Second Amendment without material modification or conditions with findings that PSNH's decision to enter into this Second 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").

15. Berlin Station supports this petition, and the Department of Energy does not object to the Second Amendment, and assents to the recommendation of approval via order *nisi*.

WHEREFORE, PSNH respectfully requests that the Commission:

1. approve the Second Amendment via Order *nisi*, without material modification or conditions, as there are no contested issues in this matter, and the Second Amendment is simply a matter of legislative compliance;
2. find that PSNH's decision to enter into this Second Amendment consistent with a legislative mandate 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 as directed by 2022 N.H. Laws, ch. 275; and,
4. grant such other and further relief as may be just and proper.

Dated at Manchester, New Hampshire this 26th day of August, 2022.

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 August 26, 2022, I caused the attached to be served pursuant to N.H. Code Admin. Rule Puc 203.11.



Jessica Chiavara