

STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

January 29, 2020 - 2:11 p.m.
Concord, New Hampshire

NHPUC 13FEB'20 PM 3:15

RE: 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.

PRESENT: Chairwoman Dianne Martin, Presiding
Cmsr. Kathryn M. Bailey
Cmsr. Michael S. Giaimo

Doreen Borden, Clerk

APPEARANCES: **Reptg. Public Service Company of New**
Hampshire d/b/a Eversource Energy:
Jessica A. Chiavara, Esq.
Robert A. Bersak, Esq.

Reptg. Burgess Biopower, LLC:
Carol J. Holahan, Esq. (Foley Hoag)

Reptg. the City of Berlin:
Christopher L. Boldt, Esq. (Donahue..)

Court Reporter: Steven E. Patnaude, LCR No. 52

CERTIFIED
ORIGINAL TRANSCRIPT

APPEARANCES: (C o n t i n u e d)

Reptg. Residential Ratepayers:

D. Maurice Kreis, Esq., Consumer Adv.
Pradip Chattopadhyay, Asst. Cons. Adv.
Office of Consumer Advocate

Reptg. PUC Staff:

F. Anne Ross, Esq.
Brian D. Buckley, Esq.
Thomas C. Frantz, Dir./Electric Div.
Richard Chagnon, Asst. Dir./Electric
Stephen Eckberg, Electric Division

I N D E X

PAGE NO.

WITNESS PANEL: **FREDERICK WHITE**
 ERICA MENARD
 ROBERT DESROSIERS
 PRADIP CHATTOPADHYAY
 THOMAS FRANTZ
 (Added at Page 75) **DAMMON FRECKER**

Direct examination by Ms. Chiavara	13
Direct examination by Ms. Holahan	18, 76
Direct examination by Mr. Kreis	21
Direct examination by Ms. Ross	30
Interrogatories by Cmsr. Bailey	32, 46, 77, 81
Interrogatories by Cmsr. Giaimo	66, 76, 77
Interrogatories by Chairwoman Martin	78

* * *

CLOSING STATEMENTS BY:

Mr. Kreis	84
Ms. Ross	86
Mr. Boldt	87
Ms. Holahan	88
Ms. Chiavara	90

E X H I B I T S

EXHIBIT NO.	D E S C R I P T I O N	PAGE NO.
3	Corrected Supplemental Rate Impact of this Agreement on the Typical Residential Customer	9
4	Corrected Supplemental Rate Impact of this Agreement on the Typical C&I Customers in classes reflected in Attachment A to the Eversource Energy filing dated 12-21-19	9
5	First Amendment to the Amended and Restated Power Purchase Agreement	10
6	Testimony of Frederick B. White	10
7	Settlement Agreement, with attachments, of the Rate Recovery of Costs in Excess of the Cumulative Reduction Cap Under the Power Purchase Agreement with Berlin Station, LLC	10

P R O C E E D I N G

CHAIRWOMAN MARTIN: Okay. We are here this afternoon in Docket DE 19-142, which is the Public Service Company of New Hampshire d/b/a Eversource Energy matter regarding rate recovery costs in excess of the Cumulative Reduction Cap under the Power Purchase Agreement with Berlin Station.

Before we get started, let's take appearances.

MS. CHIAVARA: Good afternoon, Commission. I'm Jessica Chiavara, counsel, and Robert Bersak, Chief Regulatory Counsel, for Public Service Company of New Hampshire doing business as Eversource Energy. Eversource also has Mr. Frederick White and Ms. Erica Menard here to testify as part of the witness panel.

Thank you.

MS. HOLAHAN: Good afternoon, Commissioners. On behalf of Burgess Biopower, Carol Holahan, from Foley Hoag. With me today is Robert Desrosiers, who will be our witness. Also at the table is Mr. Dammon Frecker, in case any additional questions come up that are

1 outside the scope of Mr. Desrosiers'
2 responsibilities.

3 CHAIRWOMAN MARTIN: Thank you.

4 MR. BOLDT: I'm Chris Boldt, of
5 Donahue, Tucker & Ciandella, for the City of
6 Berlin.

7 MS. CHIAVARA: I did not recognize
8 you back there. Nice to see you.

9 MR. BOLDT: Nice to see you.

10 MR. KREIS: Good afternoon
11 Commissioners. I am D. Maurice Kreis, the
12 Consumer Advocate, representing residential
13 utility customers. The gentleman to my left is
14 the Deputy Consumer Advocate, Pradip
15 Chattopadhyay, and he will serve as our witness
16 on the witness panel this afternoon.

17 MS. ROSS: Good afternoon,
18 Commissioners. Anne Ross, and with me today is
19 Tom Frantz, Director of the Electric Division;
20 Brian Buckley, Staff Attorney; and Rich
21 Chagnon, Assistant Director of the Electric
22 Division; and Steve Eckberg, on behalf of
23 Staff.

24 CHAIRWOMAN MARTIN: Okay. Thank you.

1 Before we get started, should we go over the
2 exhibits?

3 MS. CHIAVARA: Sure. Absolutely.
4 So, beginning with the first two exhibits,
5 during the prehearing conference in this
6 docket, the Commission made two information
7 requests that were marked as "Exhibits 1" and
8 "2". Eversource responded to those two
9 requests, as well as produced supplements to
10 those requests, to illustrate additions and
11 modifications that were requested by Staff and
12 the Commission. To provide the complete
13 development of those requests, we have here
14 copies of the original and supplemental
15 responses to each of those records requests, as
16 well as a corrected supplemental response,
17 which just has minor corrections, but it's just
18 to -- we attached them to show what was
19 redlined, which was very little.

20 Each iteration is compiled into one
21 document. So, Exhibit 1 and Exhibit 2, each of
22 those iterations of those two exhibits are in
23 chronological order. And, respectfully, and
24 with the Commission's permission, we've marked

1 and would like to maintain these as "Exhibits
2 1" and "2". And we've discussed this with
3 Staff prior to the convening of the hearing,
4 there seems to be no problem with that, if
5 that's all right?

6 CHAIRWOMAN MARTIN: So, I just want
7 to be clear.

8 MS. CHIAVARA: Uh-huh.

9 CHAIRWOMAN MARTIN: The corrected
10 version filed on January 24th will be
11 incorporated into the prior two exhibits and
12 not separately identified?

13 MS. CHIAVARA: They are not -- right
14 now they are combined all as one. So, the
15 first is the original that was filed on the
16 14th, then the supplement, which was filed on
17 the 24th, and the corrected supplement, which
18 just shows a couple of minor redline
19 corrections.

20 CHAIRWOMAN MARTIN: No objection to
21 anyone?

22 *[Chairwoman Martin and Cmsr.*

23 *Bailey conferring.]*

24 CHAIRWOMAN MARTIN: We just want to

1 make sure we have the same documents here.

2 MS. CHIAVARA: Sure. I have copies
3 here, if that --

4 CHAIRWOMAN MARTIN: That would be
5 greatly appreciated.

6 *[Atty. Chiavara distributing*
7 *documents.]*

8 *[Chairwoman and Commissioners*
9 *conferring.]*

10 CHAIRWOMAN MARTIN: I think, since
11 that caused a little bit of confusion, that we
12 would prefer to mark for identification what
13 you have here as number "1", the full packet,
14 as number "3". And your number "2", the full
15 packet, as number "4".

16 MS. CHIAVARA: That's fine. Thank
17 you very much.

18 (The documents, as described,
19 were herewith marked as
20 **Exhibit 3** and **Exhibit 4**,
21 respectively, for
22 identification.)

23 MS. CHIAVARA: And we have three more
24 exhibits marked for identification. So, I'm

1 going to adjust those numbers as well.

2 Shall I go ahead?

3 CHAIRWOMAN MARTIN: Yes, please.

4 MS. CHIAVARA: Okay. So, Exhibit 5
5 then is the First Amendment to the Amended and
6 Restated Power Purchase Agreement between
7 Eversource and Berlin Station, which is dated
8 November 19th, 2019, and which I will refer to
9 from now on as the "Amended PPA".

10 Exhibit 6 is the prefiled testimony
11 from Mr. White, also dated on November 19th,
12 2019.

13 And Exhibit 7 is the Settlement
14 Agreement between Eversource, Burgess Biopower.
15 LLC, the Office of the Consumer Advocate, and
16 Commission Staff. This is dated December 31st,
17 2019, and that resolves all outstanding issues
18 regarding Berlin Station.

19 CHAIRWOMAN MARTIN: Okay. Thank you.

20 (The documents, as described,

21 were herewith marked as

22 **Exhibits 5** through **7**,

23 respectively, for

24 identification.)

1 CHAIRWOMAN MARTIN: Okay. Let's
2 proceed with the witnesses. I understand we
3 have a panel. Unless you have other
4 preliminary matters?

5 MS. CHIAVARA: May I, yes, just make
6 one brief statement?

7 CHAIRWOMAN MARTIN: Sure. Go ahead.

8 MS. CHIAVARA: I just wanted to
9 summarize what the Settling Parties are seeking
10 respectfully from the Commission here today.

11 First, we are looking for the
12 approval of the Amended PPA; second is the
13 approval of the Burgess Settlement Agreement;
14 third, would be approval of cost recovery
15 incurred by SB 577 on an equal cents per
16 kilowatt-hour basis, which is using the
17 methodology desired by OCA and Staff, and is an
18 element of the Settlement Agreement, and was
19 referred to in the SCRC hearing, as it will be
20 referred to in this hearing, as the
21 "Chapter 340 Adder"; fourth, we'd like
22 inclusion of all of these costs into Eversource
23 rates effective February 1st; and, finally, a
24 finding that the Amended PPA is, in fact,

1 consistent with the requirements of RSA 374,
2 Section 57.

3 Thank you.

4 CHAIRWOMAN MARTIN: Okay. Thank you.

5 MS. CHIAVARA: Okay. Yes. So, I can
6 go ahead and call the witnesses?

7 CHAIRWOMAN MARTIN: Yes. Thank you.

8 MS. CHIAVARA: All right. Ms. Menard
9 and Mr. White.

10 MR. BERSAK: Everybody go up.

11 MS. CHIAVARA: Oh. Or everybody.

12 CHAIRWOMAN MARTIN: And perhaps it
13 might be helpful at this point if I let you
14 know what our understanding as to approach will
15 be, and then you can let me know if there is
16 another approach.

17 My understanding is that the panel
18 will be seated. That each counsel will
19 introduce their witness and do direct, that
20 there will not be cross from counsel, and that
21 then questions from the Bench will be taken.
22 Is that everyone's understanding?

23 MS. CHIAVARA: Yes.

24 CHAIRWOMAN MARTIN: All right. Thank

1 you.

2 (Whereupon **Frederick White,**
3 **Erica Menard, Robert Desrosiers,**
4 **Pradip Chattopadhyay,** and
5 **Thomas Frantz** were duly sworn by
6 the Court Reporter.)

7 CHAIRWOMAN MARTIN: Ms. Chiavara.

8 MS. CHIAVARA: Thank you.

9 **FREDERICK WHITE, SWORN**

10 **ERICA MENARD, SWORN**

11 **ROBERT DESROSIER, SWORN**

12 **PRADIP CHATTOPADHYAY, SWORN**

13 **THOMAS FRANTZ, SWORN**

14 **DIRECT EXAMINATION**

15 BY MS. CHIAVARA:

16 Q First Eversource witness, Mr. Frederick White,
17 if you could please state your full name,
18 company position, and responsibilities you
19 undertake for Eversource for the record?

20 A (White) My name is Frederick White. And I'm
21 the Supervisor in the Electric Supply
22 Department of Eversource Service Company. Our
23 responsibilities involve the procurement of
24 wholesale power for default energy service

1 supply. We manage RPS and REC requirements,
2 and also ongoing activities with IPPs and PPAs.

3 Q Marked as "Exhibit 6" is your prefiled
4 testimony dated November 19th, 2019. Do you
5 adopt Exhibit 6 as your testimony here today?

6 A (White) Yes.

7 Q And do you have any corrections to that
8 testimony?

9 A (White) No, I do not.

10 Q Okay. Thank you very much. Moving to Ms.
11 Menard, please state your full name, company
12 position, and responsibilities you undertake
13 for Eversource for the record?

14 A (Menard) My name is Erica Menard. And I'm the
15 Manager of Revenue Requirements. I'm employed
16 by Eversource Energy Service Company. And in
17 that capacity I manage the implementation and
18 calculation of revenue requirements associated
19 with several rates for PSNH, including
20 distribution rates, Energy Service rates,
21 Stranded Cost Recovery Charge rates, and System
22 Benefits Charge rates, as well as transmission
23 rates.

24 Q Thank you. Are you familiar with the two

1 versions of -- the two versions, plus the
2 corrected versions of Exhibits 3 and 4? These
3 are the responses to the Commissioners'
4 information requests made during the pre
5 conference -- prehearing conference under this
6 docket, and the supplement that followed prior
7 to today's hearing?

8 A (Menard) Yes, I am.

9 Q And were these exhibits prepared by you, at
10 your direction or with your supervision?

11 A (Menard) Yes, they were.

12 Q And given your familiarity with both, as well
13 as the corrected -- minorly corrected
14 supplement of the exhibits that we have
15 resubmitted as "Exhibits 3" and "4" today,
16 could you briefly explain what function they
17 serve to facilitate this hearing?

18 A (Menard) Certainly. Exhibits 1 and 2 were
19 record requests that came out of our prehearing
20 conference in this docket. And the request was
21 to quantify the impacts of Senate Bill 577 on
22 residential and typical C&I customers. And
23 Exhibit 1 demonstrates the impact of this
24 suspended cap, SB 577, on residential

1 customers. Exhibit 2, which is now "Exhibit
2 4", demonstrates the impact of the suspension
3 on a typical C&I customer.

4 In the stranded cost hearing, we
5 calculated the impacts on a per -- equal cents
6 per kilowatt-hour basis. And the supplements
7 that we provided to these, Exhibits 3 and 4,
8 were updated as a result of that calculation.

9 Q Okay. Great. Thank you. Thank you for that
10 explanation.

11 In addition to the information you just
12 provided regarding the aforementioned exhibits,
13 do you have anything else that add -- adds or
14 pertains -- that pertains to or impacts
15 recovering the costs of implementing SB 577?

16 A (Menard) There is one item we would like to
17 discuss, which is the implementation of the
18 Stranded Cost Energy Charge rate on
19 February 1st. The Stranded Cost Charge is made
20 up of two parts, a Part 1 and a Part 2. Part 1
21 is related to the RRB charges. And with the
22 letter that was filed on January 7th in Docket
23 17-096, there was an increase in that RRB rate.
24 So, that rate needs to go into effect on

1 February 1st.

2 There has been discussion about delaying
3 the implementation of the stranded cost rate to
4 March 1st. And we would -- whether that is
5 accepted or not, we need to implement the RRB
6 charge change on February 1st.

7 So, if we were to separate out the RRB
8 charge versus the effects of the Chapter 340
9 Adder, then we would be dealing with two
10 different rate changes, one on February 1st and
11 one on March 1st. And we have had discussions,
12 Commissioner Bailey and I have had discussions
13 in previous hearings about the desire to not
14 have multiple rate changes throughout the year.
15 So, it is our opinion that we should implement
16 these rates, both the Chapter 340 Adder, as
17 well as the base stranded cost rates, at the
18 same time, on February 1st.

19 MS. CHIAVARA: Okay. Thank you very
20 much. Thank you to both Ms. Menard and Mr.
21 White. And, at this time, I am going to
22 conclude. And I'll turn it over to Attorney
23 Holahan for further questioning of their
24 witnesses.

1 CHAIRWOMAN MARTIN: Ms. Holahan.

2 MS. HOLAHAN: Thank you.

3 BY MS. HOLAHAN:

4 Q Mr. Desrosiers, would you please state your
5 name and spell your last name for the record
6 please?

7 A (Desrosiers) Robert Desrosiers. And it's
8 D-e-s-r-o-s-i-e-r-s.

9 Q And what is your relationship to Burgess
10 Biopower?

11 A (Desrosiers) I'm a Director for Burgess.

12 Q And in your role as Director, what are your job
13 responsibilities?

14 A (Desrosiers) We deal with management, legal
15 contracts, compliance, and administrative
16 duties.

17 Q Did you participate in the settlement
18 discussions that resulted in the Settlement
19 Agreement marked for identification as "Exhibit
20 7" in this proceeding?

21 A (Desrosiers) Yes.

22 Q Can you please describe briefly the series of
23 events that gave rise to the Settlement
24 Agreement?

1 A (Desrosiers) Yes. The Legislature passed SB
2 577, the Governor signed it into law. That
3 directed the PUC to change their order in the
4 10-195 docket. That led to discussions with
5 PSNH about a PPA amendment. And the PPA
6 Amendment, as filed, gave way to the Settlement
7 Agreement.

8 Q And the Commission did indeed change the order
9 in DE 10-195 and suspended the operation of the
10 cap, correct?

11 A (Desrosiers) Correct.

12 Q From Burgess's perspective, what are the key
13 terms of the Settlement Agreement?

14 A (Desrosiers) The key terms, from our
15 perspective, is the suspension of the operation
16 of the cap for three years, which allows
17 Burgess to explore further options, to find
18 some market-based solution for the rates.

19 Q And have you taken steps towards finding a
20 permanent solution?

21 A (Desrosiers) Yes, we have. We have spent time
22 working with our consultants, doing extensive
23 modeling, and talking with stakeholders, some
24 of which in this room, about different

1 solutions that we can reach, a market-based
2 solution for the PPA with Burgess.

3 Q And have you taken any other steps with respect
4 to capital investments in the plant and
5 otherwise furthering the plant's economic
6 viability as an anchor in the North Country?

7 A (Desrosiers) Yes. We've tried to be a good
8 neighbor and we found further economic
9 development and tried to further economic
10 growth in the North Country. We've entered
11 talks and have started permitting for a
12 greenhouse project to be collocated on the
13 site. We have also taken steps to evaluate and
14 explore using thermal RECs and providing, you
15 know, thermal energy to the greenhouse and to
16 the City of Berlin, to push forward projects
17 that will be beneficial to the City and to the
18 area.

19 Q And do you believe that the Settlement
20 Agreement is consistent with Senate Bill 577?

21 A (Desrosiers) I think we all have our own
22 interpretations of what Senate Bill 577 says.
23 But I think that, you know, as with any
24 settlement, everyone is reasonably unhappy.

1 And, so, we can sign it and move on.

2 Q So, this is a negotiated position?

3 A (Desrosiers) This is a negotiated position,
4 yes.

5 Q Is the Settlement Agreement consistent with the
6 Commission's order in DE 10-195?

7 A (Desrosiers) I believe it is, yes.

8 Q And do you support the Settlement Agreement?

9 A (Desrosiers) Yes.

10 MS. HOLAHAN: That's all. The
11 witness is available for cross-examination.

12 CHAIRWOMAN MARTIN: Okay. Thank you.
13 Mr. Kreis.

14 MR. KREIS: Thank you, Chairperson
15 Martin.

16 BY MR. KREIS:

17 Q Dr. Chattopadhyay, would you please identify
18 yourself for the record, and briefly explain
19 where you work, what you do, and all of that?

20 A (Chattopadhyay) My name is Pradip
21 Chattopadhyay. I am the Assistant Consumer
22 Advocate. I represent the OCA. My background
23 is I have a Ph.D. in economics. So, I'm an
24 economist. I have been associated with

1 regulatory utility issues starting in 1999,
2 but, in the U.S., effectively starting 2002.
3 And that would do it.

4 Q Thank you. And you, I presume, are familiar
5 with the Settlement Agreement that the Office
6 of the Consumer Advocate signed, along with the
7 other parties in the room, that has been marked
8 as "Exhibit 7"?

9 A (Chattopadhyay) That is correct.

10 Q Dr. Chattopadhyay, Senate Bill 577 provides
11 that, upon request, Burgess Biopower shall make
12 their cost and profitability records available
13 to the Public Utilities Commission. Prior to
14 the submission of the Settlement Agreement, the
15 OCA argued rather forcefully that the
16 Commission should require Burgess to do exactly
17 that, produce their records.

18 But there's language at Page 6 of the
19 Settlement stating that "it is unnecessary for
20 the Commission to exercise this discretionary
21 authority...in order to" -- "to order the
22 disclosure of Berlin Station's books and
23 records." Why did the OCA agree to that
24 provision?

1 A (Chattopadhyay) First and foremost, this is a
2 settlement agreement, and we agreed to this
3 provision in the spirit of compromise, because
4 we were able to extract other value for
5 residential ratepayers.

6 Of course, we reserve the right to argue
7 for the production of the books and records if
8 the Commission doesn't approve the Settlement.
9 And, also, it's my understanding that the
10 Settlement Agreement doesn't preclude the
11 possibility that we may have to revisit this
12 matter in the future, if there is a good reason
13 to do so. So, that's -- that's the foremost
14 reason. But I can share two other points that
15 went into our thinking here.

16 The first one is the Settlement, itself,
17 suggests, you know, and you could read into it
18 that there's a colorable argument that can be
19 made that, in adopting SB 577, the Legislature
20 was suggesting that the public interest
21 requires additional ratepayer responsibility
22 for over-market costs associated with the
23 contract in question.

24 And the other thing that we also took into

1 account was, and this was largely the OCA's
2 understanding, that the Berlin Station's books
3 and records presumably do not align with the
4 FERC accounts, FERC Chart of Accounts. And,
5 so, it's possible that going through that may
6 not be illuminating enough to be germane to the
7 question the Commission must consider.

8 But I'm going to again go back and frame
9 it, you know, like the previous witness did,
10 this is really a settlement, so there is a give
11 and take. And, we have agreed to the clause
12 that was just talked about. Also, in the
13 context of the value that we extracted for
14 residential ratepayers in the Settlement.

15 Q Thank you. I want to turn to what I think is a
16 pretty key provision of the Settlement. It's
17 the provision that says that Eversource will
18 recover the additional over-market costs from
19 customers on "an equal cents per kilowatt"
20 basis.

21 My first question is, first of all, that
22 is different than the way costs are allocated
23 among the rate classes in the Eversource Asset
24 Divestiture Settlement Agreement, correct?

1 A (Chattopadhyay) That is correct. In the Asset
2 Divestiture Settlement, the residential
3 ratepayers are responsible for roughly
4 49 percent of the divestiture-related costs.

5 In the Settlement here, when we go with
6 the equal cents per kilowatt basis, the share
7 for the residential customers goes down to
8 roughly 41 percent. So, that is helpful for
9 the residential ratepayers.

10 Q Thank you. Dr. Chattopadhyay, in Exhibit 3,
11 Eversource estimates that this reallocation
12 that you just testified about will save a
13 typical residential customer 47.49 cents per
14 month, and overall the total impact on a
15 typical residential customer for the entire
16 three years will be something like \$84.

17 Do you have any reason to disagree with
18 the way the Company has done that math?

19 A (Chattopadhyay) I do not. But I will -- I
20 think, if I heard you correctly, you said
21 "\$84". And I think the rate -- the correction
22 that the Company did, that would be more like
23 \$77.

24 Q Understood. And, in Exhibit 4, Eversource

1 calculates that a typical Rate G commercial
2 customer will save about 50 cents per month as
3 a result of the Settlement, a hypothetical Rate
4 GV customer will incur an additional \$21 per
5 month, and a hypothetical large commercial
6 customer, taking service under Rate LG, will
7 incur an additional it's about \$2,700 as a
8 result of this Settlement Agreement on a
9 monthly basis.

10 Do you have any reason to disagree with
11 any of those calculations?

12 A (Chattopadhyay) No, I don't. Again, the
13 calculations that you're talking about is about
14 the rates being implemented for starting
15 February 2020 through another year. So, it's
16 really for a year.

17 Q Sure. So, I guess, at first blush, it looks
18 like this could be unfair to those Rate GV and
19 Rate LG customers, and that residential and
20 small commercial customers are benefiting at
21 the expense of those large, bigger commercial
22 customers. Do you think there's anything
23 unfair going on here?

24 A (Chattopadhyay) Nope. If anything, it's the

1 Asset Divestiture Settlement Agreement that is
2 unfair to residential customers, by allocating
3 a disproportionate share of asset divestiture
4 costs to them. The OCA agreed to that
5 allocation in exchange for other benefits as
6 part of the settlement process in the previous
7 docket, in the other docket.

8 Those other benefits are not part of the
9 bargain here. And it is fundamentally fair to
10 hold each rate class responsible for the
11 additional over-market costs associated with
12 Berlin Station in proportion to their share of
13 Eversource's load.

14 Q As you know, Dr. Chattopadhyay, those large
15 commercial classes are not represented here in
16 this proceeding because nobody has intervened
17 to assert their interests. Does that make a
18 difference, in your judgment?

19 A (Chattopadhyay) No, it doesn't. What I
20 commented on was really about the principle of
21 cost causation. So, large customers cannot
22 make the argument that they cause a
23 proportionately smaller share of these costs
24 than small customer classes, for the simple

1 reason that no customers really caused any of
2 these costs. They are essentially a public
3 policy charge that is the implement of a tax on
4 electricity.

5 Second, this should be obvious, that Staff
6 having joined the Settlement, they have a
7 different role. They balance the interest of
8 all customers and the shareholders. And I
9 think that also gives us comfort that in going
10 to what we did is right.

11 Q Are there any other benefits for all customers
12 obtained by the Settlement Agreement that were
13 important to the OCA in deciding to sign on to
14 the Agreement?

15 A (Chattopadhyay) Yes. As you've already heard,
16 you -- actually, that's not true yet, but, you
17 know, under the Settlement Agreement,
18 ratepayers are essentially lending three
19 years --

20 *[Court reporter interruption.]*

21 **CONTINUED BY THE WITNESS:**

22 A (Chattopadhyay) Under the Settlement Agreement,
23 ratepayers are essentially lending three years
24 of over-market costs to Berlin Station. At the

1 end of three years, as the Settlement is
2 worded, they are obliged to pay back this
3 additional recovery via a credit to Eversource.

4 Why the OCA thinks this is exactly what
5 the Legislature intended when it said via
6 Senate Bill 577 that the Commission should lift
7 the recovery cap for three years, Berlin
8 Station can make a colorable argument, in my
9 opinion, that it is entitled to keep the money
10 outright. So, I think Berlin Station has made
11 a significant concession here. Even though I
12 don't know how this is going to play out,
13 because after, you know, when this period ends,
14 in the next three years, what situation the
15 Berlin Station would be in. But at least we
16 have something in the Settlement that quotes
17 this requirement. And we -- personally, I
18 think that there may be more -- there might be
19 more work needed there, but that's a good step
20 for us, and that really helps us as well.

21 BY MR. KREIS:

22 Q So, overall, Dr. Chattopadhyay, do you
23 recommend that the Commission approve the
24 Settlement Agreement?

1 A (Chattopadhyay) Yes. Because it is a
2 reasonable compromise of all the issues that
3 are relevant to the proceeding, and it avoids
4 what would surely be another contentious battle
5 over Berlin Station.

6 MR. KREIS: Thank you. Those are all
7 my questions.

8 CHAIRWOMAN MARTIN: Thank you.
9 Ms. Ross.

10 MS. ROSS: Thank you.

11 BY MS. ROSS:

12 Q Mr. Frantz, sorry, could you give your name and
13 title for the record?

14 A (Frantz) Thomas Frantz, Director of the
15 Electric Division here at the New Hampshire
16 Public Utilities Commission.

17 Q And you were involved in the discussions and
18 negotiations that led to the Settlement
19 Agreement?

20 A (Frantz) Yes, I was.

21 Q And can you describe why you believe the
22 Commission should approve the Settlement
23 Agreement and whether it is consistent with
24 Senate Bill 577?

1 A (Frantz) I do believe it is consistent with
2 Senate Bill 577. And I echo many of the
3 comments that Dr. Chattopadhyay just stated. I
4 think that this avoids lengthy, contentious
5 litigation. I believe that it was clearly the
6 intent of the Legislature to help the North
7 Country and employees associated with providing
8 wood to this facility for the next three years.

9 I attended, with you, many, if not all, of
10 the meetings and sessions associated with this
11 legislation. The Science, Technology & Energy
12 Committee passed this bill 19 to 1, then passed
13 the Legislature, and the Governor signed this
14 bill. I think that there were concessions made
15 by the Parties and they were made in good
16 faith. And I believe that the Commission
17 should approve the Settlement Agreement as
18 filed.

19 Q Do you believe that the Settlement Agreement is
20 fair to all ratepayer classes?

21 A (Frantz) I do.

22 Q And why do you believe that?

23 A (Frantz) Everyone's going to share the pain of
24 over-market costs for the next three years. I

1 think that we've now divested the assets, and
2 that moving forward this is based on load, it's
3 a public policy call that the Legislature has
4 made. And I think basing the over-market costs
5 on a per kilowatt-hour basis meets those policy
6 goals fairly.

7 MS. ROSS: Thank you. I don't have
8 any further questions at this time.

9 CHAIRWOMAN MARTIN: Okay. Thank you.
10 Commissioner Bailey.

11 CMSR. BAILEY: Good afternoon.

12 BY CMSR. BAILEY:

13 Q Mr. Desrosiers, who are you employed by?

14 A (Desrosiers) I work for a management company
15 that manages Burgess Biopower.

16 Q Can you get closer to the --

17 A (Desrosiers) I'm sorry. I work for a
18 management company that manages Burgess
19 Biopower.

20 Q Okay. Are you a lawyer?

21 A (Desrosiers) I am not a lawyer.

22 Q Okay. What are you?

23 A (Desrosiers) I don't know. I manage operations
24 and compliance for various different projects.

1 And, so, I spend a lot of time working with
2 contracts, and working with various parties on
3 different -- on negotiations and transactions
4 that we do.

5 Q Okay. Sorry, I didn't mean to be
6 disrespectful. Your --

7 A (Desrosiers) Okay.

8 Q Your experience is in management, would you
9 say?

10 A (Desrosiers) Yes.

11 Q Okay. Thanks. Can you explain the
12 relationship between "Burgess Biopower plant",
13 which is referenced in the statute and signed
14 the Settlement, "Berlin Station", who executed
15 the Amended PPA, and "Laidlaw Berlin Biopower",
16 who executed the first PPA signed in May of
17 2011? How are they all related?

18 A (Desrosiers) Yes. I'll do my best without
19 drawing it out on a piece of paper.

20 Q Okay.

21 A (Desrosiers) Okay. Laidlaw Berlin Biopower
22 doesn't exist anymore. It was the original
23 developer entity that was going to, you know,
24 build and develop the plant and operate the

1 plant. They are now defunct.

2 Berlin Station ended up being the owner
3 and the asset holder or the underlying real
4 estate holder, and is, in the construct of the
5 transaction, the landlord and the one that
6 holds all the contracts.

7 Burgess Biopower is a tenant/lessee and is
8 the operator for contractual purposes.

9 Q Thank you. Was the original Power Purchase
10 Agreement and this Amendment required to be
11 filed at FERC under the Federal Power Act?
12 Does anybody know?

13 A (Desrosiers) I don't believe so. I think it
14 was -- I don't believe so.

15 MR. BERSAK: The answer to that,
16 Commissioner Bailey, is "no". The facility up
17 in Berlin is a qualifying facility under PURPA.
18 And, thus, the rates are set pursuant to PURPA,
19 that are not a filed rate under the Federal
20 Power Act.

21 CMSR. BAILEY: Okay. Thank you.

22 BY CMSR. BAILEY:

23 Q I think I'd like to hear from Eversource, OCA,
24 and Staff on the next question. And that is,

1 do you think that anything in this Agreement
2 modifies or alters the Settlement Agreement in
3 the Divestiture case, 14-238?

4 MS. CHIAVARA: I can go ahead and
5 answer that, if you'd like? Unless you want to
6 hear from the witnesses instead?

7 *[Chairwoman and Commissioners*
8 *conferring.]*

9 CMSR. BAILEY: Or to the -- I mean,
10 to the extent you don't know, you can say that,
11 and then your lawyer could maybe answer me
12 later.

13 CHAIRWOMAN MARTIN: I think the
14 Commission would like to hear from the
15 witnesses first, and then if you have anything
16 to add.

17 MS. CHIAVARA: All right.

18 WITNESS CHATTOPADHYAY: And I'm sort
19 of hesitant to comment on, in essence, would be
20 a legal opinion. So, probably let, I'm sorry,
21 let Don handle this question.

22 *[Chairwoman and Commissioners*
23 *conferring.]*

24 CHAIRWOMAN MARTIN: Okay. We're

1 going to take a new approach and ask counsel to
2 each address that in their summation at the
3 end.

4 MR. BERSAK: Thank you,
5 Commissioners. I was in, as you're saying now,
6 I was in the room where it happened. So, I can
7 kind of discuss where we went to.

8 In the 2015 Settlement Agreement, as
9 one of the negotiated aspects to close that
10 deal, there was what Dr. Chattopadhyay said,
11 was a negotiated rate design. That rate design
12 spread more of the costs of that settlement to
13 smaller customers versus larger customers. The
14 Legislature recognized that there was this rate
15 design approach. And, when the Legislature
16 enacted changes to RSA Chapter 369-B, which is
17 the statute that allows securitization, it
18 called out the potential for a different rate
19 design. And, in part of that enactment, it
20 says "notwithstanding the original
21 restructuring law", which basically called for
22 a fair and equal allocation of such costs, it
23 said "notwithstanding what was in RSA 374-F:3,
24 VI, that a different rate design could take

1 place for the 2015 settlement." So, that's how
2 the allocation occurred.

3 At the time, when the parties were at
4 the table, the Commission's enactment of 2018
5 couldn't be forecast, because the parties were
6 at the table during the 2014-2015 timeframe.
7 So, the costs of Burgess that we're talking
8 about today were costs that were unknown when
9 the parties negotiated the 2015 settlement.
10 So, the 2015 settlement could not take into
11 account changes in law or changes in costs that
12 had not yet occurred.

13 So, this new rate design is not
14 inconsistent with the 2015 settlement, because
15 they were -- those costs didn't exist then.
16 And the rate design that's in the 2015
17 settlement, the equal cents per kilowatt-hour
18 one, is consistent with the original
19 restructuring law, at RSA 374-F:3, VI.

20 CMSR. BAILEY: Thank you. Can I ask
21 a factual question about that now?

22 BY CMSR. BAILEY:

23 Q Can you confirm for me that, Mr. Frantz, I
24 think you can probably answer this, can you

1 confirm for me that the original settlement
2 agreement in 14-238 never contemplated costs
3 above the \$100 million?

4 A (Frantz) Yes, I was in that room also. And we
5 didn't discuss the Burgess over-market costs
6 associated with this. We were well -- we
7 weren't close to the \$100 million at that time.
8 And the focus was, quite honestly, on
9 fossil/hydro asset divestiture and the stranded
10 costs associated with those.

11 And the rationale for the different rate
12 design, which played out in 14-238, and I
13 believe I may have testified, and others,
14 concerning rate design in the divestiture
15 docket, had a logic to it. And the logic at
16 the time was based on more of the assets owned
17 by Eversource/PSNH were used for default
18 service, and more default service customers
19 come from the Residential class and the Small
20 General class than the Large class of
21 customers, Rate LG and GV. And, therefore,
22 because they weren't using the assets to the
23 extent that the smaller classes were, they
24 picked up less of the stranded costs.

1 MR. KREIS: Madam Chairperson, I
2 apologize for interrupting. And I know you
3 just ruled that you wanted us all to address
4 this in our summations. But you just heard a
5 fairly lengthy peroration from Mr. Bersak on
6 this subject. And you just listened to Mr.
7 Frantz testify at some length about what surely
8 were confidential settlement discussions at the
9 time. And it's always been my impression that
10 the contents of settlement discussions are not
11 suitable for disclosure in a forum like this
12 one.

13 I would just like to say, I guess I
14 want to answer Commissioner Bailey's question.
15 My answer to her question --

16 CHAIRWOMAN MARTIN: I'm going to
17 allow you to do that, because other folks have
18 done that. And, if anyone else would like to
19 do that, I will entertain that as well now.
20 Let's stick to that one issue please.

21 MR. KREIS: Yes. Absolutely.

22 I think the answer to Commissioner
23 Bailey's question is "yes", or at least
24 "potentially, yes." Because, from my

1 standpoint, and I'm at a disadvantage here,
2 because this settlement agreement -- the Asset
3 Divestiture Settlement Agreement was negotiated
4 during my exile in another state. So, I was
5 nowhere near any of this. I am reliant on, and
6 I think you need to be reliant on, the plain
7 language of the settlement. And, as far as I'm
8 concerned, on behalf of residential customers,
9 the limit of recovery of costs associated with
10 Berlin Station in the agreement, meaning the
11 Asset Divestiture Agreement, was 100 million
12 bucks. That cap was a given that went into the
13 settlement agreement.

14 And, so, this Settlement Agreement
15 that you are considering today either does or
16 is likely to result in a material change to
17 that settlement agreement, by causing customers
18 to incur additional costs beyond that
19 \$100 million cap. I was aware of that when I
20 signed this Settlement Agreement. And, as
21 Dr. Chattopadhyay and others have testified, we
22 did that because we think it's a reasonable
23 compromise, in light of all of the various
24 issues that are in play here.

1 CMSR. BAILEY: But the \$100 million
2 cap was put in place by the Commission, in
3 order to determine that the original Power
4 Purchase Agreement was in the public interest,
5 it was limited to \$100 million.

6 The Legislature has now changed that,
7 subsequent to the 14-238 Settlement Agreement.
8 So, how does it change the 14-230 -- how does
9 this modify that settlement agreement?

10 MR. KREIS: Because, as you did point
11 out, that \$100 million cap was imposed by the
12 Commission, and it was essentially a fact that
13 the Settling Parties took into account when
14 they signed that Asset Divestiture Agreement.

15 So, if you're my predecessor, as
16 Consumer Advocate, you're thinking "All right,
17 you know, what are residential ratepayers
18 really going to have to cough up here by way of
19 over-market or stranded costs as part of this
20 agreement?" And one of those considerations
21 would have been "well, we're only going to be
22 liable for up to \$100 million of over-market
23 costs associated with Berlin Station." So,
24 that was something that plainly was considered

1 at the time of the Asset Divestiture Agreement.

2 Now, you're right. The Legislature
3 has since acted. And I was prepared to argued,
4 before I signed the current Settlement
5 Agreement, that the Legislature essentially
6 violated the Constitution by imposing
7 additional over-market costs on customers,
8 because it interfered with a bargain that all
9 of the parties to the Asset Divestiture
10 Agreement had struck and that was approved by
11 the Commission.

12 And you will recall that Berlin
13 Station disagreed with that contention rather
14 vibrantly in its pleadings. And, so, what
15 we're doing here is avoiding that issue by
16 resolving it through compromise.

17 CHAIRWOMAN MARTIN: Would any other
18 counsel? It looks like Mr. Boldt and Ms. Ross
19 would like to, oh, and Ms. Holahan.

20 Okay. Let's start with Ms. Holahan,
21 and just work our way up to Ms. Ross please.

22 MS. HOLAHAN: I think, in part,
23 Senate Bill 577 says "notwithstanding any other
24 provision of law". This is the Legislature's

1 policy choices that are articulated in Senate
2 Bill 577. The Settlement Agreement, the PPA
3 Amendment are consistent with Senate Bill 577,
4 and I think that should direct the Commission's
5 attention.

6 The Consumer Advocate is 100 percent
7 correct that we disagree with the
8 interpretation that it's somehow impermissible
9 and violates the prior agreement. And those
10 arguments -- and those issues were briefed by
11 us in DE 10-195.

12 I think the relevant issue right
13 now is "is the Settlement Agreement in the
14 public interest, and does it -- and is it
15 consistent with the Commission's order in
16 DE 10-095 [10-195?] issued in December of 2018,
17 and is it consistent with the public interest,
18 the prior order, and Senate Bill 577?"

19 And I think the answer to that is
20 "Yes".

21 CHAIRWOMAN MARTIN: Mr. Boldt.

22 MR. BOLDT: Thank you, Madam
23 Chairman.

24 I was in the room also for the

1 Divestiture docket, the Settlement Agreement,
2 and the various orders that came from this
3 Commission. The PPA was expressly carved out
4 and not a subject of the Divestiture docket.
5 The Settlement Agreement states that, the
6 orders state that.

7 I think we may have gone down a
8 rabbit trail that we didn't need to go down,
9 while the issue before us now is the amendment
10 of that PPA from the 2010 docket. It is not, I
11 believe, an amendment of the Divestiture
12 Settlement Agreement. This is something that's
13 completely different and outside the realm of
14 that original docket.

15 CHAIRWOMAN MARTIN: Ms. Ross.

16 MS. ROSS: Yes. I think I'm going to
17 just -- I'll try not to rattle too much.

18 I think it's a matter of scope, when
19 you look at the 2015 Restructuring Settlement
20 Agreement. That agreement dealt with the
21 transition to a divested utility, and it did
22 deal with existing IPPs and PPAs, and it did
23 apply the same rate design allocation to them
24 as it did to the over-market costs or the

1 stranded costs associated with the divested
2 generation assets. And it also moved those
3 costs out of Energy Service rates, and into a
4 Stranded Cost category.

5 What you have to remember, though, is
6 the scope at the time was just the stranded
7 costs under the existing PPA, which were capped
8 at 100 million. That agreement, in 2015,
9 should never be used to say that, in the
10 future, should any other stranded cost arise in
11 New Hampshire for any reason, and this one that
12 we're looking at now doesn't flow out of
13 restructuring, it flows out of Senate Bill 577,
14 that agreement doesn't mean that going forward
15 forever more the state will allocate any
16 stranded investment on -- that it puts through
17 as a direct cost to all, as what we call "on
18 the line", to all ratepayers at 49 percent to
19 residential. That's way beyond the scope of
20 that agreement. And I think that's what you
21 have to keep in mind, when you see the
22 inconsistency between that agreement and the
23 current Settlement Agreement.

24 Thank you.

1 CHAIRWOMAN MARTIN: Thank you.

2 Commissioner -- I'm sorry. Commissioner
3 Bailey, would you like to proceed with
4 questions?

5 CMSR. BAILEY: Yes. Thank you.

6 BY CMSR. BAILEY:

7 Q Looking at Exhibit, I don't know if it's 3 or
8 4, I think it's 3, I just want to make sure
9 that I understand how you calculated certain
10 things, Ms. Menard.

11 Actually, before we start with that, you
12 mentioned in your opening that we've had
13 discussions about rate fluctuations. And I
14 just wanted to ask you to confirm on the record
15 that we've never had any discussions, other
16 than those on the record in a hearing, in a
17 proceeding like a rate proceeding? We have
18 never talked about that outside the walls of
19 this room, correct?

20 A (Menard) I think it was either in the stranded
21 cost -- it was in, I'm sorry, I can't recall
22 which --

23 Q It was in the hearing room, though, right?

24 A (Menard) Yes. Oh, yes.

1 Q The conversations that we have had --

2 A (Menard) Correct.

3 Q -- have always been in the hearing room?

4 A (Menard) Yes. Yes.

5 Q That's all I need to know.

6 A (Menard) Oh, yes.

7 Q All right.

8 A (Menard) Yes.

9 Q In response to the record request, the
10 calculation of the impact on the residential
11 customer, so that is Exhibit 3, and let's use
12 the most current iteration of that response.
13 So, that would be -- I wish you guys would
14 really Bates page your exhibit numbers -- your
15 exhibits, Bates number them. And these are not
16 Bates paged, but --

17 MS. CHIAVARA: That's my fault. I
18 apologize.

19 CONTINUED BY CMSR. BAILEY:

20 Q It's probably fourth page from the back is
21 where it starts, I think. So, a typical
22 customer using -- a typical residential
23 customer using 600 kilowatt-hours per month,
24 this shows that the forecast for over-market

1 costs from December 1st -- no. Those aren't
2 forecast. The actual costs, over-market costs
3 between December 1st, 2019 -- no, I'm sorry.
4 Strike that. It shows that the forecast for
5 the over-market costs between December 1st,
6 2019 and November 30th, 2020 are
7 \$25.688 million. Is that what your forecast is
8 now? Is that you, Mr. White?

9 A (White) Yes.

10 A (Menard) Yes.

11 Q Okay. And, in all the past conversations that
12 we've had in the hearing room about these
13 numbers, my reconciliation is that the
14 forecasted over-market costs for this contract
15 were going to be between 20 and 25 million, and
16 this is over 25 million. Can somebody explain
17 why it's already above the high end of the
18 forecast that was originally predicted?

19 A (White) It's a change in forward energy prices.
20 That's what it would be. So, different
21 iterations of that forecast would use a then
22 current forward price path. So, prices had
23 dropped. So, the over-market energy amount
24 went up.

1 Q Okay. Do you have any idea whether you --
2 whether -- I know you're -- you're using the
3 futures prices.

4 A (White) Correct.

5 Q So, would you speculate on whether you think
6 that in the future rates are going to continue
7 to drop, actually energy prices are going to
8 continue to drop even further, or do you think
9 they will level off or maybe increase a little
10 bit more?

11 A (White) I would be reluctant to speculate.

12 Q Okay. All right. All right. Given the
13 Settlement recommends allocating the
14 over-market costs in an equal cents per
15 kilowatt -- on an equal cents per kilowatt-hour
16 basis to every customer, I just want to verify
17 that I understand how you did the calculation
18 to get to that number. You added the
19 \$5.267 million that were the over-market costs
20 for the end of the last operating year that
21 occurred from September through the end of
22 November of 2019?

23 A (Menard) Yes. Correct.

24 Q Okay. So, those are not forecasted, those are

1 actuals?

2 A (Menard) Those are actuals.

3 Q Okay. And, then, you added the \$25.688 million
4 that you forecast based on the current futures
5 prices as the over-market costs for 12 months?

6 A (Menard) Correct.

7 Q And, then, you divided that by -- well, so,
8 then you multiplied that times three, that
9 annual forecasted over-market cost times three.
10 You added the additional already incurred
11 over-market costs. And you divided it by the
12 total number of delivered sales over the three
13 years, basically. And you got the average cost
14 of 0.356 cents?

15 A (Menard) Correct. Yes.

16 Q Okay. All right. And, then, in order to
17 calculate -- in order to answer my question
18 about how much this was actually going to cost
19 different types of customers, you took that
20 0.356 cents per kilowatt-hour and you just
21 multiplied it by the kilowatt-hours that you're
22 assuming for each group, and multiplied that by
23 36, for 36 months?

24 A (Menard) Correct.

1 Q Okay. And I think somebody already went
2 through the total impact on each customer or
3 each -- not each customer, but each amount of
4 usage. So, for a residential customer, over
5 three years, they would pay about \$77?

6 A (Menard) Correct.

7 Q For the cost to help Berlin stay open. And a
8 small business customer using 750
9 kilowatt-hours a month would pay about \$96?

10 A (Menard) Yes.

11 Q Over the three years. And a customer who uses
12 100,000 kilowatt-hours a month would pay about
13 \$13,000?

14 A (Menard) Correct.

15 Q Over the three years.

16 A (Menard) Uh-huh.

17 Q And a very large customer, with a million
18 kilowatt-hours a month, would pay about
19 \$128,000?

20 A (Menard) Correct.

21 Q Over the whole time. Okay. But, for the rates
22 being collected from February 1st, 2020 through
23 January 21st [31st?], 2021, the Stranded Cost
24 Recovery Charge rates, you had to include 14

1 months of forecasted, because the rate starts
2 on February 1st, but you have the first
3 \$5.26 million already from the last operating
4 year, and then you have two months between then
5 and February 1st of -- they're now actuals, or
6 they will be actuals tomorrow, on January 31st,
7 or Friday, right?

8 A (Menard) Yes. We had the 5.3 million from the
9 previous operating year that ended
10 December 19th -- sorry, November 2019. Then,
11 we had the 12-month forecast from December of
12 '19 through November of 2020. And, then, we
13 have to add on December of 2020 and January of
14 2021 to get us to the end of a Stranded Cost
15 rate year.

16 Q Okay.

17 A (Menard) That's where the 14 months comes in,
18 yes.

19 Q Great. Thank you. And, so, the rate that
20 you're asking to put into effect to collect all
21 of that is 0.4351 cents per kilowatt-hour?

22 A (Menard) Yes.

23 Q For every customer?

24 A (Menard) Correct.

1 Q Okay. Can we look at the table on the bottom
2 of -- well, this is Exhibit 4, first page, I
3 think. Yes. The first page, a customer that
4 has 750 kilowatt-hours a month.

5 And what this is telling us is that, if
6 Senate Bill 570 -- the first row is, if Senate
7 Bill 577 hadn't been enacted, then the cap
8 would have been hit, and you would have had to
9 return the \$5.3 million this year, and that
10 would have equated to a deduction of 0.0787
11 cents per kilowatt-hour for this customer, or a
12 59 cent decrease in their bill. Is that what
13 that first row means?

14 A (Menard) I think that might be a prior version.

15 Q Oh, I'm looking at Exhibit 4 that your counsel
16 handed me today, and it was different than the
17 number I was looking at earlier today. So, let
18 me see if I can find it.

19 MS. CHIAVARA: Ms. Menard, if I can
20 direct you, it's the original -- it's the
21 original filing of Record Request 2, the first
22 page.

23 WITNESS WHITE: It's not the
24 corrected version.

1 CMSR. BAILEY: Right. So, I need
2 to --

3 MS. CHIAVARA: It's not the corrected
4 version.

5 CMSR. BAILEY: Yes. Thank you. So,
6 it's the fourth page from the back again, on
7 the bottom of the page, that table, is the one
8 that we should be looking at. Is that correct,
9 counsel?

10 MS. CHIAVARA: If you're not looking
11 to the original, yes. The most recent version,
12 yes.

13 CMSR. BAILEY: Okay. And, so, in
14 Exhibit 4?

15 MS. CHIAVARA: Yes.

16 CMSR. BAILEY: Fourth page from the
17 back, table on the bottom.

18 BY CMSR. BAILEY:

19 Q So, without -- if 577 hadn't passed, then you
20 would be returning about 50 cents a month to
21 the small business customer, to basically
22 refund the \$5.3 million. Is that what that row
23 means?

24 WITNESS WHITE: Could we ask counsel

1 to provide the version?

2 MS. CHIAVARA: Yes.

3 WITNESS WHITE: I don't think we have
4 the version you're looking at.

5 CMSR. BAILEY: Okay. It's the
6 January 24th. It's the same as what's filed in
7 the January 24th version.

8 *[Atty. Chiavara handing document*
9 *to Witness White.]*

10 BY CMSR. BAILEY:

11 Q Oh, and I said "50 cents", and it's probably a
12 half a cent per kilowatt-hour.

13 A (White) All right. We're with you now.

14 A (Menard) Yes.

15 Q Yes. All right. So, to refund the
16 \$5.3 million, if Senate Bill 577 hadn't been
17 enacted, this customer, a customer of this
18 size, would have had a \$3.76 bill decrease to
19 pay their portion of that \$5.3 million over the
20 \$100 million cap back, each a month?

21 A (Menard) Yes.

22 Q Okay. All right. So, then, in the next row,
23 with Senate Bill 577, but without the
24 Settlement, the customer would not have

1 received that refund, and that would have been
2 the end of it?

3 A (Menard) Correct.

4 Q And, then, the third row shows that, with the
5 Settlement Agreement -- explain the last box in
6 that paragraph -- in that table. 3.77 -- they
7 would get 3.77 back, but then get --

8 A (Menard) So, the last row is trying to, in a
9 confusing way, tell you that we are returning
10 the money to customers using the -- let's just
11 talk about a residential customer, using the
12 49 percent allocation, but then paying for the
13 suspension of the cap, this Chapter 340 Adder,
14 at the 41 percent allocation. So, it's just
15 trying to communicate the difference in the
16 allocation percentages.

17 Q Okay. And it just so happens that, if you
18 multiply 0.4350 times 750 -- no. Sorry. Never
19 mind.

20 So, this customer in the small business
21 class would be reallocated \$3.76 for his
22 portion or her portion of the 5.3 million,
23 based on the allocation in the 14-238
24 Settlement, and then they would pay the costs

1 that everybody agreed to on an
2 equi-proportional basis, and that would turn
3 out to be \$3.26?

4 A (Menard) Yes. So, it shows a savings by moving
5 to that different allocation for residential
6 and for the Rate G classes, yes.

7 Q Okay. All right.

8 A (Menard) Yes.

9 Q By recovering the over-market costs more or
10 less contemporaneously with the payment of
11 those costs, does that avoid customers having
12 to pay the carrying costs at the rate of return
13 that you would have charged? If you paid the
14 over-market costs this year, and collected
15 those from customers next year, customers would
16 have had to pay more to pay you back, is that
17 right?

18 A (Menard) The return is calculated on any
19 variance between the rates that we set and the
20 expenses that we pay out. So, if there was a
21 variance, I can't say whether it would be more
22 or less, because I don't know what would happen
23 this year, as opposed to what we're using in
24 the setting of the rate.

1 Q But, if you had collected the amount that you
2 answered in the first iteration of the response
3 to my record request, which was only the
4 \$5.3 million, and you had paid Berlin
5 \$25 million in over-market costs for this
6 operating year, or \$28 million for the 14
7 months, and you didn't collect it until next
8 year, would you have charged a rate of return
9 on that?

10 A (Menard) Can I look real quick?

11 Q Sure. I mean, I think that -- I think that
12 it's better for customers to collect it
13 contemporaneously to avoid that cost. But, if
14 not, then maybe we shouldn't do it now.

15 *(Witness Menard and Witness*
16 *White conferring.)*

17 **BY THE WITNESS:**

18 A (Menard) So, let me try to answer. So, the
19 return, if we didn't -- if we didn't recover
20 the cost, the over-market costs -- either way,
21 we're recovering the over-market costs, whether
22 it's on an equal cents per kilowatt-hour basis
23 or the asset divestiture allocation. So, we're
24 recovering the cost of that either way. The

1 return is going to impact customers only when
2 there's a variance between the rates that were
3 set and the revenues that we collect from those
4 rates, and then the actual costs that come in.
5 I think that's where the variance is going to
6 come in. The return is being calculated on the
7 costs either way, whether it's in the
8 collection --

9 BY CMSR. BAILEY:

10 Q Right. So, if you --

11 A (Menard) -- or going on in the future.

12 Q If you under recover this year, based on the
13 rates that we set, then the amount that you've
14 under recovered, you will earn -- you will
15 collect a return on?

16 A (Menard) Yes.

17 Q But I'm asking you to assume that you didn't
18 collect the \$28 million this year, and you were
19 going to put it in stranded costs next year.
20 Would you have added carrying costs to that
21 \$28 million to collect it from customers, if
22 you didn't start until next year?

23 A (Menard) No.

24 Q Okay. Mr. White, at the prehearing conference,

1 well, and today as well, I think that the
2 Company has asked that the Settlement Agreement
3 and the PPA be approved for rates effective
4 February 1st?

5 A (White) Correct.

6 Q But, in your testimony and in the PPA, you say
7 that the amendment isn't effective until the
8 Commission's order approving the amendment is
9 final and not appealable. So, even if we
10 approved it today, January 28th, it wouldn't be
11 not appealable until 30 days after that,
12 because you have to wait for the appeal to run.
13 So, are you asking -- is the Company asking
14 that we put the -- we put the rate in effect
15 before the PPA is effective?

16 A (White) Yes. The Company is asking that these
17 costs go into rates on February 1st.

18 First of all, just to clarify, the
19 testimony and the amendment were written on
20 November 19th. The Settlement Agreement had
21 not been agreed to at that point in time. When
22 we are operating the contract, the PPA with
23 Burgess, because the contract, as it exists
24 today, says that energy payments are credited

1 by the prior operating year's over-market
2 amounts, that is currently what we're doing.
3 Our position is that, when the amendment is
4 final and unappealable, we will make Burgess
5 whole with the over-market payments that we've
6 been withholding, and whether that's one
7 month's, two months', or three months' worth.
8 So, that's kind of the technicality of how the
9 contract is being administered.

10 But the costs are fairly well known, and
11 that's what's been put into the rate
12 calculations. And I'm not the rate expert, Ms.
13 Menard may want to add something to this. But
14 we believe that we have a good handle on what
15 the effective rate should be on February 1st,
16 even given all those -- or, that one
17 retroactive adjustment.

18 Q Okay. So, after the order, if we approve it,
19 becomes not appealable, then you would pay the
20 over-market payments that you've been
21 withholding to Berlin, from September or
22 October?

23 A (White) Since December 1st, --

24 Q Okay.

1 A (White) -- when that new operating year began.

2 Q Okay. Thank you.

3 A (White) And the rate assumes that is going to
4 occurs.

5 Q Okay. Mr. Desrosiers, can you tell me what you
6 think the likelihood that the plant will remain
7 operating after these three years is?

8 A (Desrosiers) We're doing everything we can to
9 make sure that that happens. That's part of
10 what we talked about earlier or what I said
11 earlier about, you know, finding different ways
12 to be economic drivers in the community, work
13 with the other stakeholders to find a long term
14 solution, a long-term market-based solution
15 that doesn't require further intervention.

16 Q What do you mean by "a long-term market-based
17 solution"?

18 A (Desrosiers) We're, you know, at the early
19 stages of working on, you know, finding
20 different ways to execute the PPA or execute
21 how we operate the PPA or how we'd operate, so
22 that we can, you know, use market-based rates
23 to make the revenue for the plant.

24 Q You said that you started permitting for a

1 greenhouse project on the site?

2 A (Desrosiers) Yes.

3 Q Can you explain what that's about?

4 A (Desrosiers) We're looking to use, you know,
5 unused portions or other portions of the
6 facility to, you know, put in a greenhouse
7 project, coupled with another company, so that
8 we can, you know, grow leafy greens and other
9 vegetables in the North Country. And the
10 reason we think that that works there is
11 because of the, you know, collocation
12 opportunity with Berlin to use some of the
13 excess steam or excess heat from the plant to
14 heat the greenhouse, so that you can provide,
15 you know, fresh vegetables year-round.

16 Q So, if you got revenue from that, then the
17 amount of money that you would need to recover
18 through a PPA might be less. And, so, the
19 price could be lower and more close to
20 market-based, is that what you're saying?

21 A (Desrosiers) I'm saying that from a very
22 uninformed position about what it exactly would
23 mean. But, yes, that's the idea. That we
24 could look at, you know, additional economic

1 drivers on the site, additional collocation
2 opportunities, additional ways to, you know,
3 use -- ways to heat other things from the plant
4 to try to, you know, add additional economics
5 or revenue to the facility.

6 Q And "additional revenue to the facility" would
7 mean you would need to recover less from the
8 PPA?

9 A (Desrosiers) Yes.

10 Q Okay. Thank you. Could I hear from OCA, what
11 you think the likelihood that the plant will
12 remain open after the end of the three years?
13 Do you think that there's a possibility that
14 this loan might be repaid?

15 A (Chattopadhyay) Again, I don't have the
16 information set that the previous witness had.
17 But, to me, when I look at it and I look at
18 sort of \$75 million over three years, and it
19 has to be recovered right next year, that's
20 going to be a challenge. And, so, I'm hoping
21 that it is understood, actually behooves the
22 stakeholders to think about what can be done,
23 and we should be having conversations as to
24 making sure that, you know, the real interest

1 for us is that we indeed get back the money.

2 But we can't go overboard to the point
3 that the Company goes bankrupt and there's
4 nothing to get from them. So, we will really
5 have to think through this. And I'm just
6 sharing that, coming sort of into the process
7 late here, as far as the Settlement document is
8 concerned, but that's my view. So, that is
9 something that needs to be worked on.

10 Q Mr. Frantz, do you have anything you want to
11 add or --

12 A (Frantz) I think it's clear that the
13 Legislature understood that this plant would
14 struggle for not just this year, but for the
15 next couple years. And that gives time to the
16 plant, which was intended, I think, and
17 discussed, to work out additional revenue
18 sources or something else to stay viable.

19 I think it would just be speculation on my
20 part right now to say whether or not they will
21 be viable at the end of the three years. I
22 don't see market conditions changing a lot,
23 based on future prices and natural gas prices.
24 But that can change fairly quickly also.

1 But I think it will be a challenge, but
2 you've heard from the Company it's a challenge
3 they're already starting to think about and try
4 to meet.

5 CMSR. BAILEY: Okay. Thank you.
6 That's all I have.

7 CHAIRWOMAN MARTIN: Commissioner
8 Giaimo.

9 CMSR. GIAIMO: This is a good
10 jumping-in point.

11 BY CMSR. GIAIMO:

12 Q I'd like to hear if the parties gave
13 consideration to, rather than having a one-year
14 payback, something like a three-year payback,
15 which would be consistent with the three-year
16 suspension? It seems to me, given
17 Mr. Chattopadhyay's point, that a \$75 million
18 repayment could be significantly onerous.
19 Would 25 million be less onerous? And was that
20 considered, and are the parties opposed to
21 that?

22 A (Desrosiers) I don't think it was considered as
23 part of the discussion. But we'd welcome it.

24 MS. CHIAVARA: Excuse me, Commission?

1 Is there any way that we could ask,
2 respectfully, for a five-minute recess, and get
3 right back to your questions?

4 CHAIRWOMAN MARTIN: Yes. We'll
5 recess now.

6 MS. CHIAVARA: Thank you very much.

7 *(Recess taken at 3:34 p.m. and*
8 *resumed at 3:45 p.m.)*

9 CHAIRWOMAN MARTIN: And we will go
10 back on the record.

11 Is there anything we need to do
12 before we proceed with questioning the
13 witnesses?

14 MS. CHIAVARA: No. But thank you for
15 the recess. I appreciate that, Chair.

16 CHAIRWOMAN MARTIN: Okay. Thank you.
17 Commissioner Giaimo.

18 BY CMSR. GIAIMO:

19 Q So, when we left, do the parties now want to
20 respond?

21 A (White) The question was "whether the credits
22 would be amortized over a three-year period,
23 rather than the one-year period as the PPA is
24 currently written?"

1 Q I think the question was "whether or not the
2 parties would be amenable to that?" Yes.

3 A (White) Yes. We would be amenable to that.

4 A (Desrosiers) We would be amenable to that.

5 A (Chattopadhyay) I would let Don chime in.

6 MR. KREIS: From the standpoint of
7 the OCA, that would be a material change to the
8 Settlement Agreement. And we would, therefore,
9 go back to our *status quo* anti position and go
10 back to litigating.

11 CMSR. GIAIMO: Okay.

12 MS. ROSS: Do you want to speak or
13 should I, Tom?

14 MR. FRANTZ: Feel free.

15 [Laughter.]

16 MS. ROSS: I always get the fun job.

17 I think that the Staff believes that
18 the Settlement as it's currently crafted is
19 consistent with the legislative intent. And we
20 wouldn't support a material change at this
21 time.

22 To follow on, we think that, even if
23 the costs were amortized over three years, the
24 challenge of performing with even a \$25 million

1 credit in that first year is going to be the
2 death knell, unless there are material changes
3 to the revenue stream.

4 And I further think that the
5 Legislature didn't intend for this approval to
6 be the permanent solution. What they intended
7 was for the companies to go back and work out a
8 better long-term, market-based alternative for
9 this facility.

10 CMSR. GIAIMO: Okay. Thank you,
11 Attorney Ross. My first sheet is all about --
12 my first sheet of questions is all about
13 legislative intent. So, thank you for the
14 transition. And thank you to the panel for
15 answering that question. I suspected there was
16 a reason why the one-year was what it was. So,
17 thank you.

18 BY CMSR. GIAIMO:

19 Q So, digging into the legislative intent of
20 Senate Bill 577, and to the extent -- I'm
21 asking the parties to answer to the extent they
22 know or have some legislative background.

23 Was Senate Bill 577 intended to be a
24 bridge to find a long-term solution?

1 A (Desrosiers) Yes.

2 A (Frantz) I agree.

3 Q Okay. Was it a gift or was the expectation
4 that it would be paid back?

5 A (Desrosiers) I think the legislative intent was
6 that it was going to be a gift. But that's not
7 where we're at today.

8 A (Frantz) I don't recall the Legislature, in the
9 committees that I attended, ever using the word
10 "gift". I think they recognize that these were
11 over-market costs, and that the plant stated,
12 and they believe, that, if the current
13 conditions stayed the way they were, the plant
14 would close. And there would be a serious
15 economic hit to the Berlin area and the North
16 Country.

17 Q Did the Legislature appreciate the magnitude of
18 costs associated with Senate Bill 577?

19 A (Frantz) I think, through this docket, we've
20 seen the magnitude potentially higher than what
21 was estimated at the time. At the time, I
22 estimated over-market energy costs per year at
23 somewhere in the 18 to \$22 million range, I
24 believe. They were certainly aware that there

1 would be over-market-market costs associated
2 with this for three years.

3 Q During the legislative discussions, was there
4 ever any indication with respect to the
5 Legislature's intent with regard to -- with
6 respect to cost recovery, whether a flat rate
7 was something that they thought was, in fact,
8 equitable or the proper approach?

9 A (Frantz) Rate design was never addressed during
10 these hearings. The overall macroeconomic
11 effects were the key aspect of the hearings.

12 Q At any time was there ever a discussion that
13 all the electric utilities should contribute,
14 as there might be a bigger state public policy
15 at issue?

16 A (Frantz) I don't recall that being discussed on
17 the record. Though, I -- I don't think I can
18 find it in the history of the docket either.

19 Q Okay. Switching gears slightly. So, let's
20 play out what happens if Berlin Station were to
21 cease operation after three years. How would
22 that play out? What would Eversource do? How
23 would ownership of the plant and potential sale
24 play out?

1 A (White) The PPA outlines the purchase of power
2 products from the facility. To the extent they
3 produce energy, capacity, or RECs, the PPA
4 identifies the cost for us to buy those
5 products. I don't honestly know how it might
6 play out.

7 If they ceased producing energy, we would
8 simply not receive megawatt-hours or RECs, so
9 we would not pay them anything. To the extent
10 anything was produced, our payment -- the
11 over-market amounts would be credited against
12 those payments.

13 It's possible that the plant could cease
14 producing energy for a period of time and still
15 receive capacity credits from ISO-New England,
16 which, under the PPA, we would purchase at a
17 fixed price, as outlined in the PPA.

18 I don't know that that situation going on,
19 it doesn't feel like a breach of contract to
20 me. So, I'm not a lawyer, a contract lawyer.
21 I'm not really sure how long a situation like
22 that could go. But, from a contract
23 administration standpoint, that's how it would
24 work initially.

1 Q Okay. So, my understanding, and it might be --
2 obviously, it might be a flawed one, was that
3 the -- part of the benefit of the initial
4 agreements was that, effectively, the
5 ratepayers were helping to sustain Berlin
6 Station, and that, effectively, they would pay
7 the first \$100 million under the initial
8 Settlement. And, if there was some sort of
9 forced sale and the plant wasn't to operate,
10 that things -- that the money over the
11 \$100 million would then be refunded back and
12 flowed through back to the ratepayers in a sale
13 of the plant. Is that a misunderstanding?

14 A (White) No. Those clauses do exist. That the
15 100 million is, effectively, a coupon value
16 toward the purchase of the plant. The PPA
17 assumes that's at the end of the contract term.
18 We'd have to -- I'd have to read it more
19 closely. I'm not intimately familiar with all
20 the details of those arrangements, what
21 happens, what would move that series of events
22 forward in time.

23 Q Do we have a general idea of what the plant's
24 net book is now? The value of the plant, if it

1 were to be sold? No?

2 A (White) I do not.

3 Q Okay. Is it -- this may or may not be
4 answerable, but is it under \$175 million, which
5 could be the total amount paid by ratepayers
6 from, what, 2014 through 2022? Not answerable?

7 A (White) I don't know.

8 Q Okay. Has anyone done any economic analysis on
9 the direct and indirect economic development
10 benefits associated with the plant? Do they
11 exceed the costs being paid?

12 A (Frantz) There was an economic analysis done
13 for the facility by, I think, Brian Gottlieb,
14 and that was presented to the Legislature. And
15 it's included in the record at the Legislature.
16 It's public.

17 I will say it was based on 2015, with some
18 updates for 2016. That's the timeframe of his
19 economic study.

20 Q I think one of the perceived values to the
21 state associated with the plant is, obviously,
22 the logging and the pulp, the pulp industry
23 benefits. I'm wondering, given the plant's
24 proximity to the Maine border, do we know how

1 much pulp is actually from Maine and how much
2 is from New Hampshire, and even Vermont?

3 WITNESS DESROSIERS: Dammon.

4 MR. FRECKER: Yes. So, the plant
5 gets about 60 percent of its wood supply from
6 New Hampshire, --

7 *[Court reporter interruption.]*

8 MR. FRECKER: Oh, I'm sorry. The
9 plant gets about 60 percent of its wood supply
10 from New Hampshire, about 15 to 20 percent from
11 Maine. And it varies from year to year,
12 Commissioner. And the rest comes from as far
13 away as Canada, Massachusetts, Vermont and New
14 York.

15 CHAIRWOMAN MARTIN: Would you mind
16 joining the panel and being sworn in, so we can
17 get that on the record.

18 *[Short pause.]*

19 (Whereupon **Dammon Frecker** was
20 duly sworn by the Court
21 Reporter.)

22 CHAIRWOMAN MARTIN: Ms. Holahan,
23 could you please?

24 BY MS. HOLAHAN:

1 Q Would you state your -- would you state your
2 name for the record please?

3 A (Frecker) My name is Dammon Frecker.

4 Q And by whom are you employed?

5 A (Frecker) CS Operations, Incorporated.

6 Q And what are your job responsibilities at CS
7 Ops.?

8 A (Frecker) So, I am the Asset Manager for
9 Burgess Biopower for the ownership team. And I
10 also manage developments and operations of
11 other businesses that the company advances.

12 Q In this capacity, do you oversee or do you have
13 experience with the wood contracts for the
14 supply of wood products at the Berlin Station
15 facility?

16 A (Frecker) Yes. I manage wood procurement for
17 the facility.

18 MS. HOLAHAN: Thank you.

19 BY CMSR. GIAIMO:

20 Q Okay. So, just for the record, maybe you can
21 repeat the percentage of wood supply for the
22 plant by state?

23 A (Frecker) Sure. So, it varies a little bit
24 from year to year. But, typically, we procure

1 about 60 percent of our fuel supply from the
2 State of New Hampshire, 10 to 20 percent from
3 the State of Maine, and then the remainder of
4 it comes from as far away as Massachusetts,
5 Canada, New York, and Vermont. We have a very
6 large region that we need to pull from.

7 Q And is that referred to as your "wood basket"?
8 Is that the terminology?

9 A (Frecker) That is a term that many people use,
10 yes.

11 Q Okay. All right. Thank you.

12 CMSR. BAILEY: May I ask a follow-up
13 question?

14 BY CMSR. BAILEY:

15 Q Why don't you buy all of it in New Hampshire?

16 A (Frecker) There's not enough wood available.
17 We use 800,000 tons a year. You know, a
18 typical biomass plant is using 150 to 200,000.

19 BY CMSR. GIAIMO:

20 Q Mr. Desrosiers, Dr. Chattopadhyay suggested
21 that the books and records might not be
22 insightful, because you wouldn't be using
23 FERC-specific accounting techniques. Is that
24 something that the Company would be able to

1 provide, specifically FERC accounting
2 methodologies?

3 A (Desrosiers) I don't know.

4 Q So, this, I guess, if you can't answer this
5 question, I would hope that Attorney Holahan
6 might answer it in her closing statements. But
7 would the Company be opposed to providing
8 updates to the Legislature and the Commission
9 on the state of the market, changes in
10 circumstance, and plans to ensure payback over
11 the next two or three years?

12 A *[No verbal response.]*

13 CMSR. GIAIMO: So, I will certainly
14 let Ms. Holahan answer that later, if that's
15 the best approach? Okay. So, I'm done. I
16 don't think they can answer it. So, I'm done.

17 CHAIRWOMAN MARTIN: Okay. Thank you.
18 I have a question that I think Eversource may
19 be best able to answer.

20 BY CHAIRWOMAN MARTIN:

21 Q On what date did the Cumulative Reduction
22 Factor reach \$100 million?

23 A (White) It was sometime in September. I don't
24 have an exact date.

1 Q You can't narrow that down at all?

2 A (White) We typically don't track it daily.
3 There's really no need to track it even
4 monthly. But, for obvious reasons, we were. I
5 would estimate it was mid month. I just know
6 we were under 100 million at the end of August
7 and over 100 at the end of September.

8 Q And that's 2019?

9 A (White) That's correct.

10 Q We heard testimony today that this was
11 essentially a loan of three years of
12 over-market costs. What is the three-year
13 period?

14 A (White) The law suspends operation of the cap
15 for three years.

16 Q Uh-huh.

17 A (White) Our reading of the contract is that the
18 cap would operate beginning on December 1st,
19 2019. The contract is very clear that the
20 100 million is considered at the end of each
21 operating year. So, the fact that we crossed
22 that threshold in September, under the plain
23 language of the contract, that's immaterial.
24 You look at it at the end of an operating year.

1 And, at the end of November 2019, we were over
2 100. So, I would say that the suspension of
3 the operation of the cap for the three-year
4 began on December 1st, 2019, and would end on
5 November 30th, 2022. That's the three years.

6 Q Okay. I understand that. I think that's a
7 different question, though.

8 A (White) Okay.

9 Q The accrual of the over-market costs for a
10 three-year period of time, does that begin in
11 September?

12 A (White) Well, I guess you could say it began in
13 September, and the 5 million accrued from that
14 point, from that point until November 30th.

15 Q So, is it actually more than three years?

16 A (White) Well, operation of the cap was
17 suspended for three years. I guess it's a
18 matter of how you want to count the months.
19 You know, in that final operating year that
20 ends on November 30th, 2022, during the --
21 during the administration of the contract
22 during that year, that ends on November 30th,
23 2022, credits are not applied against payments,
24 because operation of the cap has been

1 suspended. Nevertheless, during that year,
2 over-market amounts are still accumulating.

3 So, I guess I'm not clear what the
4 question is. I think what we're concerned with
5 is suspending the cap for three years.

6 Q So, if the cap is suspended until
7 November 30th, 2022, the accrual of over-market
8 costs will actually be a loan greater than 36
9 months?

10 A (White) Yes.

11 CHAIRWOMAN MARTIN: Thank you. I
12 have no other questions.

13 Yes, Commissioner Bailey.

14 CMSR. BAILEY: I have a follow-up on
15 that.

16 BY CMSR. BAILEY:

17 Q So, I think what you're saying is that there
18 really isn't \$100 million -- there wasn't,
19 before Senate Bill 577, a limit on the \$100
20 million cap, except for, whenever that cap was
21 exceeded, it ended at the end of the operating
22 year, whatever that amount was. So, it could
23 have gone over \$100 million, and -- oh, but
24 ratepayers would have paid, like it's set out

1 here, ratepayers would have paid the \$5 million
2 back next year?

3 A (White) Yes. \$5 million of credits against
4 energy payments would begin on December 1st,
5 2019. Effectively, what that's doing is
6 resetting the 105 million, at the end of the
7 operating year, back to 100. And, then, on
8 December 1st, it begins -- the 100 begins to be
9 added to again. So, when you get to the end of
10 that operating year, it likely would have been
11 125. The operation of the cap would credit
12 energy payments in the following year by that
13 over \$100 million amount, resetting the
14 100 million back to 100 million. And, on the
15 next day, it would begin accumulating above
16 100 million again. So, it sort of waterfalled
17 year to year.

18 Q Okay. Thanks. And, then, Ms. Menard, we
19 talked about the rate that we're going to put
20 in the Stranded Cost Recovery Charge, if we
21 approve everything that you've asked for on
22 February 1st for this year. But, for next
23 year, the rate, all other things being equal,
24 would be lower than the rate this year, because

1 it would be the \$25.866 million divided by the
2 7.7 million megawatt-hours. So, it would be
3 much lower next year, isn't it?

4 A (Menard) Yes.

5 Q And that's how you would calculate, all other
6 things being equal, that would take the
7 estimated 12 months over-market costs that is
8 the best number that we know today, and divide
9 that by the 7.7 million megawatt-hours?

10 A (Menard) Yes.

11 CMSR. BAILEY: Okay. Thank you.

12 CHAIRWOMAN MARTIN: Okay. Is there
13 any need for follow-up or can we move on?

14 MS. CHIAVARA: I'm sorry. Nothing at
15 this time, Chair. Thank you.

16 CHAIRWOMAN MARTIN: Okay. Great. We
17 can excuse the witnesses then. Thank you,
18 everyone.

19 Other than exhibits, is there
20 anything else we need to do before the parties
21 sum up?

22 *[No verbal response.]*

23 CHAIRWOMAN MARTIN: Okay. Then,
24 without objection, we will strike ID on

1 Exhibits 3 through 7.

2 MS. CHIAVARA: Yes.

3 CHAIRWOMAN MARTIN: And we will start
4 with closing statements, with Mr. Kreis.

5 MR. KREIS: Thank you. I always
6 appreciate the chance to go first.

7 I guess the first thing I want to
8 make sure that the Commission is aware, since
9 I'm not sure if it was apparent today, is that
10 the Settlement Agreement that is pending in
11 front of you is the result of a great deal of
12 good faith negotiations among parties that I
13 think clearly acted with a sense of goodwill.
14 This is not -- nobody put a shotgun to the
15 heads of me or Dr. Chattopadhyay. It was a
16 pleasure dealing with the other parties,
17 including the Staff. I think there was an
18 earnest desire to reach a reasonable
19 accommodation of all the competing issues.
20 There was some pretty serious disagreements
21 that we started with in this docket. And I'm
22 pleased with the way that we were able to
23 resolve them.

24 This is clearly a short-term stopgap

1 measure that we have placed in front of you.

2 It does not even pretend to resolve the
3 long-term question of the future of this plant
4 or the future of the forest products industry
5 in the North Country, or anything else. It is
6 merely a way of dealing in a fair and equitable
7 way with the realities of Senate Bill 577.

8 The OCA made some very significant
9 concessions in this docket, particularly giving
10 up our quest to have a look at the books and
11 records of Berlin Station. We're comfortable
12 having made that concession. We think that the
13 uniform cents per kilowatt-hour charge is
14 eminently fair, even though it deviates from
15 the cost allocation that applies in the Asset
16 Divestiture -- in the Asset Divestiture
17 Agreement.

18 I promise you, and everybody else,
19 that I will be back at the Legislature
20 testifying that taxing Eversource electric
21 customers to sustain the economic development
22 of the North Country is bad public policy.
23 But, for the present, this is a reasonable
24 response to the realities of Senate Bill 577.

1 I earnestly request the Commission's
2 approval of this Settlement Agreement as it has
3 been entered, because any other result will --
4 well, that the OCA has to reserve the right to
5 reassert all of its previously taken positions,
6 some of which were quite emphatically taken,
7 and I would revert back to those in the event
8 the Settlement Agreement isn't approved.

9 I believe it's in the public
10 interest, and I urge you to give it your
11 *imprimatur*.

12 Thank you.

13 CHAIRWOMAN MARTIN: Thank you.

14 Ms. Ross.

15 MS. ROSS: I always hate following
16 the OCA. Ditto.

17 The Staff, obviously, supports the
18 Settlement. It is a compromise. And it is
19 not, as Mr. Kreis just indicated, it is not a
20 long-term solution, nor do we believe that
21 Senate Bill 577 was intended to be a long-term
22 solution. And, as difficult as this is, to
23 accept a piece of legislation that has an
24 obvious not-very-attractive endpoint here for

1 this company, we do believe that the
2 Legislature simply intended for us to give them
3 a three-year break for them to try to come up
4 with a way to become viable, based on the
5 current market.

6 So, we urge the Commission to accept
7 the Settlement and to put the rates into effect
8 February 1st, to avoid up and down, as you've
9 learned, the Company will hold payments that it
10 has currently withheld from Burgess until the
11 actual effective date of the amendment, which
12 should be, barring unforeseen appeals, 30 days
13 after the order is issued. And Staff believes
14 that a reconciling rate can go into effect and
15 be adjusted subsequently, if necessary, if
16 there are challenges to the Settlement and the
17 approval.

18 Thank you.

19 CHAIRWOMAN MARTIN: Thank you.

20 Mr. Boldt, did you wish to speak?

21 MR. BOLDT: Merely, in support of the
22 plant, we ask that the Settlement Agreement be
23 adopted.

24 CHAIRWOMAN MARTIN: Okay. Thank you.

1 Ms. Holahan.

2 MS. HOLAHAN: First of all, I'd like
3 to thank the Commission for their time, and
4 particularly their attention to the timing
5 issues involved in this docket. And to the
6 other parties, in working together to resolve
7 these pressing issues.

8 You know, as the Commission is aware,
9 this case has a long and rather complicated
10 history. It spans a number of different
11 dockets and a parade of parties, and, would be
12 a nod to Darwin, only the hardy remain today, I
13 will say.

14 The Settlement -- first of all, with
15 respect to Commissioner Giaimo's most recent
16 question about reporting: Philosophically, the
17 company is not opposed to reporting, and
18 certainly we would comply to with any order
19 issued by the Commission.

20 My primary concern is, to what extent
21 and what's the scope of the reporting, how
22 often and how frequent? Because the fact of
23 the matter is, any distraction and any
24 additional requirements are merely going to

1 pull Burgess away from the more pressing issue
2 of finding a long-term solution. And, clearly,
3 that's the intent, in signing onto the
4 Settlement Agreement, is to provide that
5 three-year runway for the company to do that.

6 I would venture to guess that the
7 collective years of experience from the
8 attorneys in this room is more than 150 years,
9 not to date any of us. But I can also say that
10 this docket has presented some very novel
11 issues for all of us. And it really comes at
12 the intersection of a bilaterally negotiated
13 PPA, the Legislature's enactment of policy
14 related to energy and economic development, and
15 the PUC's authority under state -- the
16 statutorily mandated authority.

17 I think what the Settlement Agreement
18 does is to try to strike that delicate balance
19 between and among all of those competing --
20 sometimes competing things, and to relieve the
21 tension, there's sometimes tension created by
22 those three things.

23 All in all, I think Burgess is fully
24 supportive of the Settlement Agreement. It

1 avoids protracted litigation, and it provides a
2 definitive and final solution, so that it can
3 direct its attention to the task at hand, which
4 is finding a long-term fix.

5 And, based on that, I would ask the
6 Commission to approve the PPA Amendment and
7 approve the Settlement Agreement, so that the
8 rates can go into effect by February 1.

9 Thank you.

10 CHAIRWOMAN MARTIN: Thank you.

11 Ms. Chiavara.

12 MS. CHIAVARA: Yes. Thank you. I
13 also want to thank the Commission for hearing
14 us out today. And I'd also like to thank the
15 OCA for punctuating the good faith that all
16 four parties executed throughout, since the
17 outset of this Settlement Agreement, with an
18 eye to really resolve any outstanding issues in
19 regards to the implementation of SB 577. So,
20 thank you for that.

21 And, then, I would just like to
22 reiterate what we are seeking, which is
23 approval of the Amended PPA; approval of the
24 Burgess Settlement Agreement in its entirety;

1 approval of cost recovery incurred by SB 577 on
2 the equal cents per kilowatt-hour basis, which
3 is the term that's -- and the method of
4 allocation which is contained within the
5 Settlement Agreement; and inclusion of all
6 these costs into Eversource rates effective
7 February 1st, as a failure to add any of these
8 components, in the face of SB 577, will only,
9 at this point, adversely affect our customers.

10 Thank you very much.

11 CHAIRWOMAN MARTIN: Thank you. And I
12 think the Commission would also like to say
13 thank you to everyone. It is clear that there
14 was a lot of work and effort that went into
15 reaching an agreement here. So, thank you all
16 for that.

17 And we will take the matter under
18 advisement. We know that it is important, and
19 that you're hoping to get an order quickly.

20 And we will adjourn.

21 ***(Whereupon the hearing was***
22 ***adjourned at 4:16 p.m.)***