EXHIBIT 1

Bill Text: NH SB271 | 2022 | Regular Session | Amended
New Hampshire Senate Bill 271 ***(Prior Session Legislation)***

Bill Title: Relative to the Burgess BioPower facility.

Spectrum: Moderate Partisan Bill (Republican 5-1)

Status: *(Passed)* 2022-06-28 - Signed by the Governor on 06/24/2022; Chapter 0275; Effective 06/24/2022 [SB271 Detail]

Download: New_Hampshire-2022-SB271-Amended.html

SB 271 - AS AMENDED BY THE HOUSE

03/24/2022 1107s
5May2022... 1788h

2022 SESSION

22-3039
12/10

SENATE BILL ***271***

AN ACT relative to the Burgess BioPower facility.

SPONSORS: Sen. Bradley, Dist 3; Sen. Hennessey, Dist 1; Sen. Watters, Dist 4; Sen. Avard, Dist 12; Sen. Ward, Dist 8; Sen. Giuda, Dist 2

COMMITTEE: Energy and Natural Resources

AMENDED ANALYSIS

This bill requires the public utilities commission to revise certain orders relative to the Burgess BioPower plant in Berlin.

- -

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.
03/24/2022 1107s
5May2022... 1788h 22-3039
12/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT relative to the Burgess BioPower facility.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Burgess BioPower Plant. 2018, 340:1-2 are repealed and reenacted to read as follows:
340:1 Findings.
I. The general court finds 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.
340:2 Public Utilities Commission; Proceedings; Authority to Amend Prior Orders. Notwithstanding any other provision of the law to the contrary, the public utilities commission shall 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 in

the following manner:

I. Further Suspension of Operation of Cap. The public utilities commission shall amend its Order No. 25,213 and its Order No. 26,198 and Order No. 26,333 issued in Docket DE 10-195 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.

II. The Burgess BioPower plant and its affiliates shall, upon request therefor, make its and their capital and operating cost and profit and loss records available to the department of energy for investigation and audit, any of which records may be exempt from public disclosure under RSA 91-A:5, IV if reasonably so designated by the plant. All such records shall also be made available to the Office of the Consumer Advocate. The department of energy shall conduct an investigation and audit of the plant's costs and revenues and submit a report thereon to the house science, technology, and energy committee and to the senate energy and natural resources committee on or before December 31, 2022.

2 Effective Date. This act shall take effect upon its passage.

EXHIBIT 2

AMENDED AND RESTATED POWER PURCHASE AGREEMENT

This AMENDED AND RESTATED POWER PURCHASE AGREEMENT (this "Agreement") is made as of May 18, 2011 (the "Effective Date") by and between Public Service Company of New Hampshire ("PSNH"), Laidlaw Berlin Biopower, LLC ("LBB") and Berlin Station, LLC a Delaware limited liability company, as assignee of Laidlaw Berlin Biopower, LLC ("Seller"). PSNH, LBB and Seller together are the "Parties" and each individually is a "Party" to this Agreement.

WHEREAS, PSNH and LBB entered into that certain Power Purchase Agreement, dated as of June 8, 2010 ("Original PPA") with respect to a biomass-fueled electrical generation facility to be located in Berlin, New Hampshire (the "Facility"); and

WHEREAS, the Original PPA is the subject of that certain Order No. 25, 213, dated April 18, 2011 issued by the New Hampshire Public Utilities Commission (the "NHPUC Order"); and

WHEREAS, LBB desires to assign the Original PPA to Seller, and Seller and PSNH desire to amend and restate the Original PPA as provided herein in response to the terms of the PUC Order; and

WHEREAS, Seller wishes to sell to PSNH and PSNH wishes to purchase from Seller the Products (as defined below) to be produced by the Facility (as defined below) on and after the Effective Date on the terms specified herein.

NOW, THEREFORE, in consideration of the mutual promises herein contained, the Parties hereto agree as follows:

ARTICLE 1. DEFINITIONS

For the purposes of this Agreement, the following terms shall have the meanings set forth in this Article 1. Capitalized terms used but not defined in this Agreement shall have the meanings set forth in the ISO-NE Documents.

1.1 "Affiliate" of a Person means any other person controlling, controlled by or under common control with such first Person.

1.2 "Adjusted Base Price" is defined in Section 6.1.2(a)(ii).

1.3 "Adjustment Percentage" means a percentage equal to (i) the number of days in the first Operating Year, divided by (ii) 365.

1.4 "Ancillary Services" means any Product other than Energy, Capacity or Renewable Products that is recognized and compensated pursuant to the ISO-NE Documents from time to time.

1.5 "Average LMP Price" means the weighted average dollar value of Energy (in MWhs) delivered from the Facility to PSNH over any Operating Year (including all MWhs paid for at the Adjusted Base Price), based solely on the hourly Day-Ahead ISO-NE locational marginal price in effect at the pricing location designated for the Facility within the ISO-NE settlement and billing systems of the ISO-NE market system for each MWh delivered, or such successor energy price or other prices in effect from time to time which include all equivalent price components as the current locational marginal price for Energy.

1.6 "Base Price" means as defined in Section 6.1.2(a)(i).

1.7 "Biomass Fuel" means untreated, plant derived material including brush, stumps, lumber ends and trimmings, wood pallets, bark, wood chips or pellets, shavings, sawdust and slash, agricultural crops, and any other form of biomass eligible for use to generate a REC in New Hampshire under applicable law from time to time.

1.8 "Business Day" means a day on which Federal Reserve member banks in New York, New York are open for business; and a Business Day shall start at 8:00 a.m. and end at 5:00 p.m. Eastern Prevailing Time. Notwithstanding the foregoing, with respect to notices only, a Business Day shall not include the Friday immediately following the U.S. Thanksgiving holiday.

1.9 "Capacity" means the MWs of capacity that (i) has obtained a capacity supply obligation as a result of participation and clearing in an ISO-NE administered forward capacity auction, reconfiguration capacity auction or any successor or other capacity supply auction, marketplace, or agreement and, (ii) as such, is receiving compensation pursuant to this capacity supply obligation by ISO-NE via the ISO-NE settlement process governed by the ISO-NE Documents.

1.10 "Change in Law" means that any applicable law, rule, or regulation is changed (whether directly or indirectly by pre-emption, displacement or substitution) or any new applicable law, rule, or regulation is enacted or promulgated subsequent to the Effective Date.

1.11 "Claim" has the meaning set forth in Section 13.3.

1.12 "Code" means Internal Revenue Code of 1954, as amended from time to time.

1.13 "Credit Rating" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issues rating by S&P, Moody's or any other rating agency agreed by the Parties.

1.14 "Cumulative Factor" means as defined in Section 6.1.4.

1.15 "Cumulative Reduction" means as defined in Section 6.1.4.

1.16 "Delivery Point" means the Interconnection Point, as defined in the Interconnection Agreement.

1.17 "Effective Date" has the meaning set forth in the preamble.

1.18 "Energy" means electric energy, as such term is defined in the ISO-NE Documents, generated by the Facility which is delivered to PSNH at the Delivery Point..

1.19 "Environmental Attributes" means any and all generation attributes under any and all international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now or in the future, to the favorable generation or environmental attributes of the Facility or the Products produced by the Facility during the Term including: (a) any such credits, certificates, benefits, offsets and allowances computed on the basis of the Facility's generation using renewable technology or displacement of fossil-fuel derived or other conventional energy generation; (b) any GIS Certificates issued in connection with Energy generated by the Facility; and (c) any voluntary emission reduction credits obtained or obtainable by Seller in connection with the generation of Energy by the Facility; provided, however, that Environmental Attributes shall not include Tax/Grant Benefits.

1.20 "EPT" means Eastern Prevailing Time.

1.21 "Facility" means Seller's plant for generating electricity as described in Appendix A.

1.22 "FERC" means the Federal Energy Regulatory Commission.

1.23 "Force Majeure" has the meaning set forth in Section 14.1.

1.24 "GIS" means the New England Power Pool General Information System, which includes a generation information database and certificate system, operated by NEPOOL, its designee or successor entity, that identifies generation attributes of MWhs of energy accounted for in such system, and any successor to such system.

1.25 "GIS Certificate" means an electronic certificate created pursuant to the Operating Rules of the GIS or any successor thereto to represent the generation attributes of each MWh of Energy generated within the ISO-NE control area and the generation attributes of certain Energy imported into the ISO-NE control area.

1.26 "GIS Forward Certificate Transfer System" means the mechanism specified in the operating rules of the GIS system to effect transfers of GIS Certificates in advance of their creation.

1.27 "Good Industry Practices" means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric generation industry with respect to producing electricity from the Facility. Good Industry Practices shall also include

any of the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been reasonably expected to accomplish the desired result at a reasonable cost. Such practices, methods and acts must comply fully with applicable laws and regulations, good business practices, economy, reliability, safety, environmental protection, and expedition, having due regard for current editions of the National Electrical Safety Code and other applicable electrical safety and maintenance codes and standards, and manufacturer's warranties and recommendations. Good Industry Practices are not intended to be the optimum practice, method, or act to the exclusion of all others, but rather to be a spectrum of acceptable practices, methods, or acts generally accepted in the electrical generation industry in the United States.

1.28 "In-Service Date" means the date on which Seller declares the Facility as in service for purposes of qualification for the Code and the Facility is capable of regular commercial operation with a predictable daily dispatch. Seller shall provide PSNH with notice of the actual In-Service Date within fifteen (15) days of such date.

1.29 "Interconnecting Utility" means Public Service Company of New Hampshire (or its successor in interest) in its capacity as a party to the Interconnection Agreement.

1.30 "Interconnection Agreement" means the Interconnection Agreement by and between Seller and the Interconnecting Utility and/or the ISO-NE as the same may be amended from time to time.

1.31 "Interest Rate" means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law in transactions involving entities having the same characteristics as the Parties.

1.32 "Investment Grade Rating" means a Credit Rating of "Baa3" or better from Moody's, "BBB-" or better from S&P or Fitch, or an equivalent Credit Rating by another nationally recognized rating service reasonably acceptable to the Party accepting a guaranty of the obligations of the other Party. If there are split ratings, the lowest of the Credit Ratings will apply.

1.33 "ISO New England Inc." or "ISO-NE" means ISO New England Inc., its successor, or any other independent system operator or regional transmission organization for New England.

1.34 "ISO-NE Documents" means all tariffs, rules and procedures adopted by NEPOOL, ISO-NE, or the RTO, and governing wholesale power markets and transmission in New England, as such tariffs, rules and procedures may be amended from time to time, including but not limited to, the ISO-NE Tariff, the ISO-NE Operating Procedures (as defined in the ISO-NE Tariff), the ISO-NE Planning Procedures (as defined in the ISO-NE Tariff), the Transmission Operating Agreement (as defined in the ISO-NE Tariff), the Participants Agreement, the manuals, procedures and

business process documents published by ISO-NE via its web site and/or by its e-mail distribution to appropriate NEPOOL participants and/or NEPOOL committees, as amended, superseded or restated from time to time.

1.35 "ISO-NE Energy Price" means the hourly Day-Ahead ISO-NE locational marginal price at the pricing location designated for the Facility within the ISO-NE settlement and billing systems of the ISO-NE market system, or such successor energy price or other prices in effect from time to time which include all equivalent price components as the current LMP.

1.36 "ISO-NE Tariff" means the ISO New England Inc. Transmission, Markets and Services Tariff, FERC Electric Tariff No. 3, as may be amended from time, or any successor tariff accepted by FERC.

1.37 "kW" means a kilowatt.

1.38 "kWh" means a kilowatt hour.

1.39 "LMP" means Locational Marginal Price.

1.40 "MW" means a megawatt.

1.41 "MWh" means a megawatt hour.

1.42 "Market Rule 1" means Section III of the ISO-NE Tariff, or any successor agreement accepted or approved by FERC.

1.43 "NEPOOL" means the New England Power Pool, the power pool created by and operated pursuant to the provisions of the RNA, or any successor or replacement organization(s).

1.44 "NHPUC" means the New Hampshire Public Utilities Commission or its successor.

1.45 "NHPUC Order" means Order No. 25, 213, dated April 18, 2011 issued by the NHPUC.

1.46 "New England Control Area" means as defined in the ISO Tariff.

1.47 "New England Markets" means as defined in Section I of the ISO Tariff.

1.48 "NH Class I Renewable Energy Credits" or "NH Class I RECs" means REC produced or, in the event of a Change of Law that would have been produced, by the Facility pursuant to its qualification as a renewable energy source as defined in the NH Class I Renewable Statutes at NH RSA § 362-F, as in effect on the Effective Date, and regardless of any subsequent Change in Law.

1.49 "Operating Year" means the twelve (12) consecutive calendar months starting on the first day of the calendar month following the In-Service Date and each subsequent

twelve (12) consecutive calendar month period; provided that the first Operating Year shall also include the days in the prior month on and after the In-Service Date.

1.50 "Participants Agreement" means the "Participants Agreement among ISO New England Inc. as the Regional Transmission Organization for New England and the New England Power Pool and the entities that are from time to time parties hereto constituting the Individual Participants" dated as of February 1, 2005, as may be amended from time to time, or any successor thereto accepted by FERC.

1.51 "Person" means a natural person, a corporation, partnership, limited liability company, trust or any other organization or entity however organized.

1.52 "Pool Transmission Facility" or "PTF" means as defined in Section II of the ISO Tariff.

1.53 "Products" means the following items to be produced by the Facility: (i) any electrical product or service that is recognized and compensated pursuant to the ISO-NE Tariff from time to time, including but not limited to Energy, Capacity, Ancillary Services, and (ii) any Renewable Products. Products do not include any Tax/Grant Benefits.

1.54 "Project Site" has the meaning set forth in Appendix A.

1.55 "Purchase Option Agreement" means the agreement described in Appendix B hereto.

1.56 "Qualified Institution" shall mean a commercial bank or trust company organized under the laws of the United States or a political subdivision thereof, with (i) a Credit Rating of at least (a) "A" by S&P and "A2" by Moody's, if such entity is rated by both S&P and Moody's or (b) "A" by S&P or "A2" by Moody's, if such entity is rated by either S&P or Moody's but not both, and (ii) having a capital surplus of at least Ten Billion Dollars ($10,000,000,000).

1.57 "RNA" means the New England Power Pool Second Restated NEPOOL Agreement dated as of September 1, 1971, as amended and restated from time to time, governing the relationship among the NEPOOL Participants, or any successor agreement.

1.58 "Renewable Energy Certificates" and "RECs" means any certificate, either paper, electronic, or any other form (including a NEPOOL GIS Certificate) that can be used to transfer rights to Environmental Attributes produced by the Facility under any Renewable Portfolio Standard.

1.59 "Renewable Portfolio Standard" means New Hampshire RSA Chapter 362-F, and any other statute, law, regulation or order promulgated by any legislative and/or regulatory authority pertaining to similar renewable energy source requirements.

1.60 "Renewable Products" means RECs and any other Environmental Attributes.

1.61 "Renewable Products Payment" means the alternative compliance payment schedule set forth under NH RSA § 362-F for RECs produced by NH Class I Renewables, as

adjusted from time to time, *provided* that if there is a Change in Law with respect to NH RSA § 362-F and/or the New Hampshire statute is pre-empted by later federal law, Parties will use good faith efforts to revise the Renewable Products Payment to conform to the value of any replacement payment available following such Change in Law, consistent with the provisions of Section 23 of this Agreement; and *provided further*, that for the Term, the Renewable Products Payment shall not be less than the alternative compliance payment schedule (including future adjustments) set forth under NH RSA § 362-F:10 for RECs produced by NH Class I Renewables as in effect on the date hereof, and as construed by the NHPUC Order for years after 2025.

1.62 "Scheduled Operation Date" means the date set forth in Section 5.2.

1.63 "Schiller Station" means as defined in Section 6.1.2(a)(ii).

1.64 "Seller Required Approvals" means approvals from (i) the NHPUC to the extent applicable to Seller's ability to operate within New Hampshire; (ii) approval of the New Hampshire Site Evaluation Committee, together with related New Hampshire agency permits and approvals.

1.65 "Site" means the real estate on which the Facility is located.

1.66 "Site Owner" means any entity holding fee interest title in or to any portion of the Site and improvements thereon.

1.67 "Tax" or "Taxes" means all taxes that are currently or may in the future be assessed on any products or services that are the subject of this Agreement.

1.68 "Tax/Grant Benefits" means any production tax credits, investment tax credits, grants in lieu of tax credits, fuel subsidies or other non-tax cash grants or subsidies, credits or benefits that may be available with respect to the Facility pursuant to the Code or other federal or state law, including but not limited to production tax credits pursuant to Section 45 of the Code, and investment tax credits or grants available under Section 48 of the Code; provided, however, that any marketable, recurring attribute resulting from Facility production that is not listed above shall not be deemed a Tax/Grant Benefit. For the avoidance of confusion, any marketable Environmental Attribute, known today or created in the future, resulting from production of the Facility (as opposed to any tax benefit or a one-time credit or grant) is not and shall not be considered to be a Tax/Grant Benefit but instead is a Product.

1.69 "Term" means the period set forth in Section 2.1.

1.70 "Wood Price Adjustment" and "WPA" are defined in Section 6.1.2(a)(ii).

ARTICLE 2. TERM OF AGREEMENT

2.1 **Term.** This Agreement shall be binding as of the Effective Date and remain in effect thereafter through twenty (20) Operating Years from the In-Service Date ("Term").

2.2 **In-Service Date.** Seller shall provide to PSNH, subject to PSNH approval, a plan for testing and startup of the Facility at least thirty (30) days prior to the dates upon which Seller tests the Facility in order to establish the In-Service Date. PSNH shall have the right to be present at the Site during start-up and testing (subject to all safety procedures in effect at the Site), and/or to receive documentary evidence of the Facility's operation.

2.3 Following the end of the Term or otherwise upon termination of this Agreement, the Parties hereto shall have no further obligations hereunder, except as otherwise expressly provided herein or to the extent necessary to enforce the rights and obligations of the Parties arising under this Agreement before the end of the Term and except as provided below in Section 2.4 and in Article 7, Right of First Refusal and Purchase Option.

2.4 If ownership and/or operating control of the Facility is transferred to a third party, then Seller shall include or cause to be included as part of the transfer and sale agreement with the third party the obligation that the new owner and/or the new operator shall assume all of the rights and obligations of Seller set forth in this Agreement.

ARTICLE 3. FACILITY

3.1 **Description.** The Facility is as described in Exhibit A, Description of Facility.

3.2 **Primary Energy Source.** Seller shall ensure that the Facility shall use Biomass Fuel as its primary energy source.

3.3 **Qualifying Facility.** Facility shall acquire its status as a "qualifying facility" pursuant to 18 C.F.R. Part 292 prior to the In-Service Date and maintain such status throughout the Term.

ARTICLE 4. PREREQUISITES FOR PURCHASES

4.1 PSNH's obligation to begin the purchase of Products is contingent upon the satisfaction of all the following conditions:

4.1.1 Execution of an Interconnection Agreement by the applicable parties and, if required, FERC acceptance and approval of the Interconnection Agreement under Section 205 of the Federal Power Act;

4.1.2 PSNH has received evidence to its reasonable satisfaction that Seller has obtained all permits, licenses, approvals and other governmental authorizations needed to commence commercial generation of Products, including certification to produce NH Class I RECs;

4.1.3 PSNH has received from the NHPUC a final, nonappealable decision acceptable to PSNH in its sole discretion, approving and allowing for full cost recovery of the rates, terms and conditions of this Agreement;

4.1.4 The Parties shall execute as of the In-Service Date, a Purchase Option Agreement that is acceptable to PSNH in its sole discretion in the form as set forth in Appendix B hereto, to be recorded, and PSNH shall have been issued a title insurance policy insuring its rights under the Purchase Option Agreement. The Purchase Option Agreement will provide that the Site Owner (as defined therein) may terminate the Purchase Option Agreement if this Agreement is terminated by Seller by reason of a PSNH Event of Default under Section 12.1.1 hereunder. If the Purchase Option Agreement is terminated for any other reason, PSNH may immediately terminate this Agreement without further liability.

ARTICLE 5. PURCHASE AND SALE OF POWER

5.1 Subject to the terms and conditions of this Agreement, Seller shall sell and deliver and PSNH shall purchase and accept delivery of one hundred percent (100%) of the Products produced by the Facility.

5.2 The original "Scheduled Operation Date" of the Facility is June 1, 2014. Seller agrees to give notice to PSNH at the end of each calendar quarter of any change in this date and of progress in obtaining permits and constructing the Facility.

5.3 Seller shall deliver the Energy to PSNH at the Delivery Point.

5.4 Prior to the In-Service Date and satisfaction of the Prerequisites for Purchases listed in Article 4, but subsequent to the execution of an Interconnection Agreement, Seller shall sell and PSNH shall purchase one hundred percent (100%) of the Products generated during this period, including Products generated pursuant to such Facility testing, at the prices set forth in Section 6.1.1.

5.5 Following the In-Service Date and subject to the satisfaction of the Prerequisites for Purchases listed in Article 4, throughout the Term, Seller shall deliver to PSNH one hundred percent (100%) of the Products and PSNH shall purchase the Products at the prices set forth in Section 6.1.2.

ARTICLE 6. PRICING

6.1 The price to be paid by PSNH to Seller for the Products shall be as follows:

6.1.1 For Products purchased pursuant to Section 5.4:

(a) All Products except Capacity and NH Class I RECs: PSNH shall pay to Seller the product of the ISO-NE Energy Price and the hourly quantity (MWh) of delivered Energy for its receipt of all Products (including other Renewable Products) except Capacity and NH Class I RECs;

(b) Capacity: PSNH shall pay to Seller any capacity revenues assigned to the Facility and paid to PSNH by ISO-NE or other compensation realized by PSNH for Capacity from the Facility; and

(c) NH Class I RECs: PSNH will pay to Seller the product of thirty-five dollars ($35.00) and the hourly quantity (MWh) of delivered Energy that qualifies to receive NH Class I RECs or upon other mutually agreeable conditions that certify that NH Class I RECs have been delivered to PSNH.

6.1.2 For Products purchased pursuant to Section 5.5:

(a) Subject to Section 6.1.4(c) below, all Products except Capacity and NH Class I RECs will be compensated for by multiplying the Adjusted Base Price in $/MWh by the hourly quantity (MWh) of delivered Energy:

(i) The base Energy purchase price (the "Base Price") shall be equal to $69.80/MWh.

(ii) Beginning with the start of the first full calendar quarter following the In-Service Date, and thereafter on the start of each calendar quarter, the Base Price will be adjusted up or down by the "Wood Price Adjustment" or "WPA". The WPA will reflect the difference between the actual average $/ton Biomass Fuel cost that PSNH paid for Biomass Fuel at its Schiller station facility ("Schiller Station") during the immediately preceding calendar quarter compared to $30/ton. This difference (whether positive or negative) in $/ton will be multiplied by a factor of 1.6 tons/MWh and added to the Base Price. If PSNH (i) materially changes the quality composition of its Biomass Fuel from that utilized by the Schiller Station in calendar year 2008 (by, for example, utilizing lower grade biomass, construction/demolition wastes or co-firing with fossil fuels), or (ii) effectively realizes a material discount or subsidy on its fuel purchases (whether directly or through reduced fuel prices reflecting upstream subsidies) and such discount or subsidy does not provide for similar savings to the Facility's cost of fuel, or (iii) PSNH ceases burning Biomass Fuel at Schiller Station or Schiller Station is not operational, then, for those periods during which either condition (i), (ii) or (iii) is in effect, the WPA shall be based on the difference between the actual average $/ ton cost of Biomass Fuel at the Facility and $30/ton, subject to PSNH's audit and independent review of the reasonableness of such actual costs. Thus, as of the start of each calendar quarter, such adjustment (the "Adjusted Base Price") shall be computed as follows:

Wood Price Adjustment (WPA) = 1.6 x [actual average $/ton minus $30/ton]

Adjusted Base Price ($/MWh) = Base Price + WPA

(b) Capacity: PSNH shall pay for Capacity from the Facility as follows:

(i) For the first two (2) Operating Years: $2.95 per kW-month of Capacity.

(ii) For the next three (3) Operating Years: $4.25 per kW-month of Capacity.

(iii) For each subsequent Operating Year, the Capacity Price shall be increased by $0.15 per kW-month.

(iv) Notwithstanding (i) and (ii) above, any payments for Capacity prior to June 2014 shall be in accordance with the provisions of Section 6.1.1(b).

(c) NH Class I RECs:

PSNH shall pay to Seller the following amounts for NH Class I RECs upon delivery of NH Class I RECs into the PSNH NEPOOL GIS account or upon other mutually agreeable conditions that certify that NH Class I RECs have been delivered to PSNH:

(i) For NH Class I RECs that are generated pursuant to Facility operation during the first two (2) Operating Years of the Term, PSNH shall pay the product of (i) fifty percent (50%) of the Renewable Products Payment that is applicable to the period during which the NH Class I REC was generated and (ii) the quantity of NH Class I RECs delivered during that period.

(ii) For NH Class I RECs that are generated pursuant to Facility operation during Operating Years three (3) through seven (7) of the Term, PSNH shall pay the product of (i) eighty percent (80%) of the Renewable Products Payment that is applicable to the period during which the NH Class I REC was generated and (ii) the quantity of NH Class I RECs delivered during that period.

(iii) For NH Class I RECs that are generated pursuant to Facility operation during Operating Years eight (8) through twelve (12) of the Term, PSNH shall pay the product of (i) 75% of the Renewable Products Payment that is applicable to the period during which the NH Class I REC was generated and (ii) the quantity of NH Class I RECs delivered during that period.

(iv) For NH Class I RECs that are generated pursuant to Facility operation during Operating Years thirteen (13) through seventeen (17) of the Term, PSNH shall pay the product of (i) seventy percent (70%) of the Renewable Products Payment that is applicable to the period during which the NH Class I REC was

generated and (ii) the quantity of NH Class I RECs delivered during that period.

(v) Thereafter for the balance of the Term, PSNH shall pay the product of (i) fifty percent (50%) of the applicable Renewable Products Payment that is applicable to the period during which the NH Class I REC was generated and (ii) the quantity of NH Class I RECs delivered during that period.

6.1.3 Limitations on Purchase/Sale Obligations. In any Operating Year during the Term, PSNH shall not be obligated to purchase by reason of this Agreement in excess of 400,000 NH Class I RECs (with such figure for the first Operating Year multiplied by the Adjustment Percentage). Any NH Class I RECs produced by the Facility and not delivered to PSNH hereunder may be sold by Seller under other arrangements. In each Operating Year except the final Operating Year, for Energy deliveries in excess of 500,000 MWh (with such figure for the first Operating Year multiplied by the Adjustment Percentage), an "Excess MWh Adjustment" will be calculated. The Excess MWh Adjustment shall equal the quantity of excess Energy multiplied by the difference between (i) the Average LMP Price and (ii) the weighted average Adjusted Base Price for MWh of Energy paid for at the Adjusted Base Price during such Operating Year. The Excess MWh Adjustment, whether positive or negative, will be divided into three (3) equal portions and included on the Seller's invoice for each of the first three (3) billing months of the subsequent Operating Year. A negative Excess MWh Adjustment will be administered as a credit to PSNH, i.e. it will reduce payments due to Seller pursuant to Section 6.1.2(a). A positive Excess MWh Adjustment will be administered as an additional charge to PSNH, i.e. it will increase the payments due to Seller pursuant to Section 6.1.2(a). Notwithstanding this Section 6.1.3, during the final Operating Year of the Term, under no circumstances will PSNH purchase in excess of 500,000 MWh by reason of this Agreement.

6.1.4 Cumulative Factor.

(a) For each MWh of Energy delivered during the Term of this Agreement, a negative or positive adjustment shall be determined. When the Adjusted Base Price (in $/MWh) in effect during an hour exceeds the ISO-NE Energy Price in that hour, the hourly negative adjustment shall equal the delivered MWhs multiplied by the difference between the ISO-NE Energy Price and the Adjusted Base Price. When the Adjusted Base Price (in $/MWh) is less than the ISO-NE Energy Price, the hourly positive adjustment shall equal the delivered MWhs multiplied by the difference between the ISO-NE Energy Price and the Adjusted Base Price. These negative and positive adjustments will be continuously aggregated to determine a cumulative net negative adjustment or net positive adjustment for the purpose of adjusting the price of any Facility purchase option by PSNH pursuant to Article 7 hereof, if exercised. At any point in time, the cumulative value of these adjustments is defined as the "Cumulative

Factor". At any point in time, a net negative Cumulative Factor value is termed a "Cumulative Reduction". A Cumulative Reduction will serve to reduce the purchase price of the Facility as provided in the Purchase Option Agreement. A net positive Cumulative Factor will bestow no rights or obligations on either Party to this Agreement.

(b) Following each Operating Year, the value of any Excess MWh Adjustment, as defined in Section 6.1.3, whether positive or negative, will be used to adjust the Cumulative Factor determined pursuant to section 6.1.4(a), to ensure that the Cumulative Factor reflects only those Energy purchases made at this Agreement's Adjusted Base Price (effectively, after the Excess MWh Adjustment).

(c) Notwithstanding Section 6.1.2 above, if at the end of any Operating Year other than the last Operating Year during the Term, there exists a Cumulative Reduction in excess of One Hundred Million Dollars ($100,000,000), such excess ("Excess Cumulative Reduction") will be credited against amounts otherwise due for Energy delivered to PSNH during the subsequent Operating Year until such Excess Cumulative Reduction is eliminated. To effect such credit, in each month during the subsequent Operating Year, one twelfth (1/12th) of the Excess Cumulative Reduction ("Monthly Energy Credit") shall be deducted by PSNH from the Seller's invoice, up to the full amount of the payment due to Seller pursuant to Section 6.1.2(a), and any excess over that amount shall carry forward to the following month to the Monthly Energy Credit. If, at the end of the Operating Year subsequent to the year during which there was an Excess Cumulative Reduction, any such amount remains, it shall be deducted by PSNH from the Seller's invoice in the next Operating Year in the same manner described above. If upon expiration of the Term PSNH does not purchase the Facility, Seller shall reimburse PSNH the value of any Excess Cumulative Reduction.

6.2 PSNH will have no claims to any Tax/Grant Benefits.

ARTICLE 7. RIGHT OF FIRST REFUSAL AND PURCHASE OPTION

7.1 Right of First Refusal.

7.1.1 If at any time Seller desires to sell for cash, cash equivalents or any other form of consideration all or any part of the Facility (except with respect to a sale/leaseback financing or similar project financing or re-financing) pursuant to a bona fide offer (or a proposed offer) of purchase to or from a third party (the "Proposed Transferee"), Seller shall submit a written offer (the "Offer") to sell and assign all or such portion of the Facility, including any associated interests or rights in the Site and/or Facility Product delivery arrangements, described in the Offer (the "Offered Assets") to PSNH or such Affiliate of PSNH designated by PSNH (collectively, "PSNH" for the purposes of this Article 7), on terms and conditions, including price, not less favorable to PSNH

than those on which the Seller proposes to sell such Offered Assets to the Proposed Transferee. The Offer shall disclose the identity of the Proposed Transferee, describe the Offered Assets proposed to be sold and any terms and conditions, including price, of the proposed sale. The Offer shall state that PSNH may acquire the Offered Assets, for the price and upon the other terms and conditions, including deferred payment (if applicable), set forth therein during the 180-day period after the delivery of the Offer by the Seller (the "Offer Period").

7.1.2 If PSNH does not purchase all or part of the Offered Assets, the unpurchased portion of the Offered Assets may be sold by Seller at any time within twelve (12) months after the date that PSNH declined the Offer or failed to close on the Offer. Any such sale shall be to the Proposed Transferee, at not less than the price and upon other terms and conditions, if any, not more favorable to the Proposed Transferee than those specified in the Offer. Any Offered Assets not sold within such twelve (12) month period shall continue to be subject to the requirements of a prior offer pursuant to this Article 7. Pursuant to the provisions of Section 2.4, the new owner of the purchased Offered Assets shall assume all rights and obligations of Seller as set forth in this Agreement, including those with respect to the Cumulative Reduction, including any prior balance thereof accumulated prior to such sale.

7.1.3 If PSNH determines during the Offer Period that it does not desire to acquire the Offered Assets, PSNH shall so notify the Seller. The Offered Assets may be sold by the Seller pursuant to Section 7.1.2 above.

7.2 Purchase Option Agreement.

7.2.1 PSNH shall have the exclusive right to purchase the Facility and all other real, personal and intangible property associated with the Facility and its operations in accordance with the Purchase Option Agreement. Seller shall cause the Site Owner and any successor(s) thereto, other entities that may hold ownership interests in the Facility, any financial lessor of the Offered Assets and any lender holding a security interest in the Facility to agree to the terms of the Purchase Option Agreement as a condition to any sale, financing, refinancing or financial sale/leaseback of the Facility. Further, upon notice to Seller, PSNH may transfer its rights under the Purchase Option Agreement to any PSNH Affiliate or other third party, inclusive of all PSNH rights under the Purchase Option Agreement. In connection with any sale made pursuant to the Purchase Option Agreement, Seller shall convey, or cause to be conveyed, the Facility and all related assets free of material financing liens.

ARTICLE 8. ADMINISTRATIVE COSTS; CHANGE IN REGULATION/LAW

8.1 **Administrative Costs.** Seller is responsible for all costs and administrative burdens of qualifying the Facility to participate in the ISO-NE markets and to participate in or qualify for any program(s) designed to document and/or provide for the sale and transfer of the Facility's Products established by any of the New England States

and/or the federal government from time to time. Seller also agrees, promptly following receipt by Seller of a written request from PSNH, to make commercially reasonable efforts to apply to other programs for the purpose of increasing the value of the Products to PSNH, in whole or in part, pursuant to the terms of this Agreement; *provided,* that such obligation does not require Seller to pursue or remain involved in litigation, assume new capital or operational obligations, amend or terminate other Product sales arrangements for NH Class I RECs, or otherwise do more than make and pursue such qualification applications; *provided further,* that if a Change in Law (as hereinafter defined) occurs that would require Seller to make a capital expenditure, to incur any expense, to incur any liability, or to increase operating costs for the Facility in order to continue to produce Renewable Products or for Seller to transfer the Renewable Products to PSNH, at PSNH's sole option so long as PSNH, in a manner reasonably acceptable to Seller, agrees to compensate Seller for all such capital expenditures, costs, losses and expenses and agrees to bear such liabilities, Seller shall (a) take such actions, as reasonably requested by PSNH, and (b) execute such documents as necessary to convey to PSNH the Renewable Products, in a form reasonably acceptable to Seller. If a Change in Law occurs where Seller realizes the monetary value of any Renewable Products obligated to be delivered to PSNH hereunder, and Seller is unable to transfer such Renewable Products to PSNH notwithstanding PSNH's request to transfer such Renewable Products to PSNH and PSNH's willingness to bear any liabilities incurred by Seller or compensate Seller for any expenses, losses or costs as provided above, Seller shall, within thirty (30) days of actual receipt, pay to PSNH the amount that Seller actually receives (net of any costs, taxes or expenses Seller incurs to receive such amounts) as a result of its ownership of the Renewable Products within a reasonable time after such amounts are paid to Seller. Subject to the reimbursement obligations of PSNH with respect to such efforts, Seller shall use commercially reasonable efforts to realize any such monetary value.

ARTICLE 9. CONSTRUCTION, OPERATION AND MAINTENANCE OF THE FACILITY: THE OPERATOR

9.1 Seller shall construct, operate and maintain the Facility using Good Industry Practices.

9.2 Seller shall construct, operate and maintain the Facility so that it obtains and retains its eligibility to produce NH Class I RECs, subject to the provisions of Section 8.1.

9.3 PSNH and Seller will be jointly responsible for administrative actions required to obtain the recognition of Capacity for the Facility within the ISO-NE market. Seller shall not be required to participate in any FCM auction process, nor will Seller be compensated for any Capacity until such Capacity is recognized by ISO-NE per Section 1.9. For the avoidance of doubt, neither Party will hold the other Party liable for any damages related to the degree to which the Facility's capability is recognized as Capacity by ISO-NE. PSNH will have no obligation to make any Capacity payments to Seller unless and until the Facility's capability satisfies the definition of Capacity in Section 1.9.

9.4 Every day (including weekends and holidays) by 9:00 a.m. EPT, Seller must provide to PSNH an estimated hourly schedule of deliverables for the following day, *except that* Seller may provide such schedule for weekends and holidays on the preceding Business Day.

9.5 Prior to October 1 of each year, Seller shall submit to PSNH for review and comment by PSNH an initial schedule of expected electricity delivery levels for the twelve (12) month period beginning with January of the following year. The schedule shall state the estimated times of operation, amounts of electricity production, number of anticipated shutdowns and reductions of output and the reasons therefore, and the dates and durations of scheduled maintenance, including a specification of maintenance requiring shutdown or reduction in output of the Facility. Subject to the requirements of Good Industry Practices, Seller shall not schedule routine maintenance of the Facility during the months of January, February, June, July or August, and shall consult with PSNH at least thirty (30) days prior to removing the Facility from service for routine maintenance. Seller is required at all times to comply with any outage scheduling procedures or requirements of ISO-NE or successor organization. Seller shall:

9.5.1 Consider requests by PSNH for revisions to the schedule within sixty (60) days from PSNH's receipt of the initial schedule, and subsequently advise PSNH of any changes in plan for conducting maintenance that would require an outage expected to be of greater than one (1) week's duration; and

9.5.2 Make all reasonable efforts, consistent with Good Industry Practices, to accommodate any additional changes in the initial schedule requested by PSNH; *provided, however*, that any such changes shall not be expected to reduce the total expected deliveries from the Facility.

9.6 Seller shall provide to any relevant person any information that may be required about the Facility's operations from time to time by NEPOOL or ISO-NE.

9.7 For the purpose of any bidding and administrative actions associated with NEPOOL or ISO-NE, PSNH shall be considered the Lead Participant as such term is defined by those organizations. The Parties will cooperate and work in good faith to establish mutually acceptable bidding procedures.

9.8 If the Facility is required to curtail deliveries of any Products pursuant to the Interconnection Agreement or ISO-NE notifications, Seller shall be entitled to effect such curtailment and PSNH shall have no obligation to pay for any Products that would have been delivered by Seller during such periods for which Seller has curtailed deliveries. PSNH shall have no obligation to accept or pay for any Products associated with energy deliveries in excess of the level to which Seller curtailed its deliveries during such periods, but PSNH shall pay Seller for any Products delivered up to the level to which Seller curtailed during such periods.

9.9 Subject only to Good Industry Practices, during any period in which ISO-NE or NEPOOL notifies or causes Seller to be notified that the Facility should operate in a

manner to mitigate other operational or electrical problems (such as maintenance, voltage deficiency, or transmission or distribution line loading problems) on ISO-NE's or NEPOOL's electrical system, Seller shall use all reasonable efforts (including, but not limited to, delaying routine maintenance, curtailing output, or increasing output) to comply with ISO-NE or NEPOOL requests to mitigate such operational or electrical problem. PSNH shall have no obligation to pay for any Products associated with energy deliveries in excess of the level to which Seller was requested to curtail its deliveries pursuant to this Section 9.8. Seller shall also be liable to pay any and all penalties, fines, sanctions, etc. imposed by ISO-NE, NEPOOL, NERC, FERC or any similar or successor organization related to any Facility-related non-compliance with the rules and requirements or such organizations. To the extent any of these penalties, fines, or sanctions are initially assessed to PSNH pursuant to PSNH's role as the purchaser of Products from the Facility or as the Lead Participant for the Facility (as defined in the ISO-NE Documents), PSNH will reduce the Seller's next monthly invoice by the amount of such penalties, fines or sanction or shall otherwise transfer the monetary obligation to Seller.

ARTICLE 10. BILLING AND PAYMENT

10.1 PSNH or Interconnecting Utility, as applicable, shall be the designated meter reader by ISO-NE and read Seller's meters.

10.2 Not later than five (5) Business Days following the end of each calendar month, PSNH shall read the Seller's meters installed as described in the Interconnection Agreement, calculate a monthly invoice for the applicable Products, and provide this information to Seller within ten (10) days of such reading. Seller shall then return to PSNH the approved invoice for payment and PSNH shall make payments to Seller electronically in immediately available funds for the total amount due within twenty-three (23) days of the meter reading date or ten (10) days of Seller's return to PSNH of the approved invoice, whichever is later; *provided, however*, that payments for NH Class I RECs will occur upon delivery into the PSNH NEPOOL GIS account, or upon other mutually agreeable conditions that certify that any and all NH Class I RECs have been delivered to PSNH. To the extent that PSNH is not satisfied that delivery of any Products has occurred, including but not limited to the satisfactory delivery of Renewable Products, PSNH shall reduce payments in an amount equal to the value of the non-delivered Products.

10.3 The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing under this Agreement and the Interconnection Agreement to each other on the same date, in which case all amounts owed by each Party to the other Party during the monthly billing period under this Agreement and/or the Interconnection Agreement, including any related damages, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts, interest, and payments or credits, that Party shall pay such sum in full when due, subject to the provisions

addressing disputed amounts set forth in Section 10.5. Except as set forth above in this Section 10.4, all payments hereunder shall be made without set-off or deduction.

10.4 Any payment not made by the date required by this Agreement shall bear interest from the date on which such payment was required to have been made through and including the date such payment is actually received at an annual rate equal to the Interest Rate.

10.5 If either Party disputes the amount of any bill, it shall so notify the other Party in writing. Each Party receiving a bill shall pay to the other Party any undisputed amount of the bill or charges when due. The disputed amount may, at the discretion of the paying Party, be held by that Party until the dispute has been resolved; provided that the paying Party shall be responsible to pay interest at the Interest Rate on any withheld amounts that are determined to have been properly billed. The disputed amount may be held by the paying Party provided that the paying Party or its guarantor, if applicable, has an Investment Grade Rating, or by a Qualified Institution if the paying Party or its guarantor, if applicable, does not have such a rating. Neither Party shall have the right to challenge any monthly bill or to bring any court or administrative action of any kind questioning the propriety of any bill after a period of twenty-four (24) months from the date the bill was delivered to the Party required to make payment thereunder; provided, however, that in the case of a bill based on estimates, such twenty-four month period shall run from the due date of the final adjusted bill.

ARTICLE 11. INTERCONNECTION AND DELIVERY

11.1 This Agreement does not provide for any electric service by PSNH to Seller. If Seller requires any electric services from PSNH and is legally entitled to such service from PSNH, Seller shall receive such service in accordance with PSNH's applicable electric tariffs or, if no currently existing tariff is applicable, by special contract subject to the approval of the NHPUC.

11.2 Seller shall be responsible for any and all costs, charges and expenses associated with the Facility in connection with transmission and distribution interconnection, service and delivery charges, including all related ISO-NE administrative fees.

11.3 In addition to the provisions of Section 6.1.3 and Section 12.2.1, for any period during which PSNH does not fulfill its purchase obligations hereunder for any reason, Seller may freely sell (subject to all applicable laws and regulations) any or all of the Facility's Products produced during such period to one or more third parties until such time as PSNH resumes purchases hereunder.

ARTICLE 12. EVENTS OF DEFAULT; REMEDIES

12.1 **Events of Default.** An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

12.1.1 such Party fails to pay an amount due by the due date, and such failure is not remedied within seven (7) Business Days after notice by the other Party; *provided, however*, is such Party fails to remedy payment and such failure is caused not (even in part) by the unavailability of funds but is caused solely by a technical or administrative error, then such Party shall have an additional three (3) Business Days to pay the amount due after notice of failure to remedy by the other Party.

12.1.2 any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated and the effect of such misrepresentation is not remedied within thirty (30) days after notice by the other Party; provided that, if any such representation or warranty cannot be made true or cured by the Defaulting Party within such 30-day period with exercise of reasonable due diligence, and if the Defaulting Party within such period submits for the Non-Defaulting Party's approval a plan reasonably designed to correct the default within a reasonable additional period of time, then, unless the Non-Defaulting Party reasonably refuses to approve such plan, an Event of Default shall not exist unless and until the Defaulting Party fails to diligently pursue such cure or fails to cure such default within the additional period of time specified by the plan; provided further that, if the Non-Defaulting Party reasonably refuses to approve such plan, the Defaulting Party shall have at least, but no more than, one hundred eighty (180) days after the date of initial notice from the Non-Defaulting Party to cure the default;

12.1.3 the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) if such failure is not remedied within thirty (30) Business Days after notice by the other Party; provided that, if any such default cannot be cured by the Defaulting Party within such 30-day period with exercise of reasonable due diligence, and if the Defaulting Party within such period submits for the Non-Defaulting Party's approval a plan reasonably designed to correct the default within a reasonable additional period of time, then, unless the non-Defaulting Party reasonably refuses to approve such plan, an Event of Default shall not exist unless and until the Defaulting Party fails to diligently pursue such cure or fails to cure such default within the additional period of time specified by the plan; provided further that, if the Non-Defaulting Party reasonably refuses to approve such plan, the Defaulting Party shall have at least, but no more than, one hundred eighty (180) days after the date of initial notice from the Non-Defaulting Party to cure the default;

12.1.4 such Party becomes or is made subject to a reorganization or liquidation proceeding administered pursuant to the U.S. Bankruptcy Code, whether pursuant to a voluntary or involuntary petition; or

12.1.5 such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving

or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party.

12.2 Rights of Non-Defaulting Party

12.2.1 If an Event of Default as set forth in this Article 12 with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right to notify the Defaulting Party and (i) designate a day, no earlier than the day such notice is effective and no later than twenty (20) days after such notice is effective as an early termination date of this Agreement, and/or (ii) withhold any payments due to the Defaulting Party under this Agreement, and/or (iii) suspend performance.

12.2.2 Upon an Event of Default, the Non-Defaulting Party, in addition to the rights described in specific sections of this Agreement, and except to the extent specifically limited by this Agreement, may exercise, at its election, any rights or remedies it may have at law or in equity, including but not limited to monetary compensation for damages, injunctive relief and specific performance.

12.3 **Other Termination Rights**

12.3.1 **Seller's Right to Terminate.** This Agreement may be terminated by Seller at any time prior to the In-Service Date in the event that Seller decides to cancel the Project because Seller is unable to procure and have delivered to the Project Site all of the equipment and materials required to construct and operate the Facility at a total installed cost consistent with Seller's budgeted costs on an economically feasible basis with a return on its total investment in the Facility satisfactory to Seller in Seller's sole discretion; *provided, however,* that in such event, Seller shall notify PSNH that Seller is irrevocably terminating Facility development and/or construction, whereupon this Agreement shall terminate without further obligation of either Party except with respect to any PSNH purchase option or right set forth in Article 7; *provided further, however,* that if Seller or an Affiliate of or successor to Seller recommences development and/or construction of the Facility within a twelve-month period from the date of such notice to PSNH, then this Agreement may be reinstated at PSNH's sole option and shall be in full force and effect upon such reinstatement.

12.3.2 **PSNH's Right to Terminate.** PSNH may, at its sole option and discretion, terminate this Agreement if (i) Seller announces its plans to permanently shut down the Facility, or (ii) if the In-Service Date is not achieved by December 31, 2014, unless otherwise ordered by the NHPUC or unless the Parties otherwise agree in writing; provided that if the In-Service Date is not achieved by June 1, 2014, then Seller shall pay to PSNH damages equal to $500 per day for each day after June 1, 2014 that the In-Service date is not achieved; and *provided further*, that the June 1, 2014 and December 31, 2014 dates shall be extended day for day for any delays in obtaining any PSNH approvals under

Sections 4.1.3 or 4.1.4 above and beyond the date that is the 180th day following the date of the Original PPA (i.e., June 8, 2010), but in no event shall any such extension be beyond December 31, 2015, or (iii) Seller fails after the In-Service Date to deliver any Products to the Delivery Point that are required to be delivered hereunder for a period of twelve (12) consecutive months; *provided* that in each case PSNH shall give Seller notice of such termination within ten (10) Business Days after such date; and *further provided* that the twelve (12) month period referred to in subsection (iii) shall be extended for any period that Seller was unable to deliver Products to PSNH in whole or in part as a result of the occurrence of a Force Majeure event; *and further provided* that any PSNH purchase option or right set forth in Article 7 shall survive such termination.

12.4 Termination Liability

12.4.1 If, prior to the In-Service Date, PSNH terminates this Agreement pursuant to Section 12.3.2 or Seller terminates this Agreement pursuant to Section 12.3.1, then neither Party shall have any liability to the other Party pursuant to this Agreement and the Parties shall be released and discharged from any obligations arising or accruing hereunder from and after the date of such termination and shall not incur any additional liability to each other as a result of such termination; provided that such termination shall not discharge or relieve either Party from any obligation that has accrued prior to such termination or from its obligations under certain other provisions of this Agreement as provided in Section 26.5.

12.4.2 Further, if Seller terminates this Agreement pursuant to Section 12.3.1 before the In-Service Date or if PSNH terminates this Agreement pursuant to Section 12.3.2 then, for a period of two (2) years following delivery of notice by Seller to PSNH of the termination of this Agreement neither Seller, its Affiliates, successors nor assigns shall: (i) seek to sell, or to sell, any electricity from an electric generating facility on the Project Site to a third person without PSNH's consent; or (ii) be entitled to enter into a long term power sales agreement for the sale of any Products and/or Renewable Energy Certificates from an electric generating facility on the Project Site with any entity other than PSNH; provided, that the foregoing restrictions shall terminate if Seller has offered in writing to PSNH during such period to reinstate this Agreement or enter into a new agreement on the same terms and conditions as this Agreement and PSNH has not agreed in writing to reinstate this Agreement or enter into such a new agreement within ninety (90) days following the receipt by PSNH of such offer.

12.4.3 If, following the In-Service Date, either Party terminates this Agreement pursuant to Section 12.2, both Parties shall be discharged from all further obligation under the terms of this Agreement, except (i) any liability which may have been incurred before the date of such termination and any liability on account of such termination, including without limitation the obligation to pay for Products delivered prior to any such termination and/or for all direct

damages incurred by the Non-Defaulting Party on account of any termination for default, which obligations shall survive the termination of this Agreement (ii) any PSNH purchase option set forth in Article 7, Right of First Refusal and Purchase Option, and (iii) any liability which survives termination of this Agreement.

ARTICLE 13. TITLE AND RISK OF LOSS; TAXES; INDEMNIFICATION

13.1 **Title and Risk of Loss.** Title to and risk of loss related to the Products delivered hereunder shall transfer from Seller to PSNH at the Delivery Point. Seller warrants that it will deliver to PSNH the Products free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

13.2 **Taxes.** With the exception of any sales or gross receipts Taxes that are required by applicable law to be paid by PSNH, Seller shall pay or cause to be paid all present and future Taxes, fees and levies on or with respect to the sale of the Products prior to the Delivery Point. PSNH shall pay or cause to be paid all present and future Taxes, fees and levies on or with respect to the purchase of the Products at, from and after the Delivery Point, other than ad valorem, franchise or income taxes which are related to the sale of the Products and are, therefore, the responsibility of Seller. Each Party shall use reasonable efforts to administer this Agreement and implement its provisions in accordance with the intent of the Parties to minimize the imposition of Taxes, fees and levies.

13.3 **Indemnification.** On and after the Effective Date, Seller and PSNH shall each, to the extent permitted by law, indemnify, defend and hold the other, its members, officers, employees and agents (including but not limited to affiliates and contractors and their employees), harmless from and against all liabilities, damages, losses, penalties, claims, demands, suits and proceedings of any nature whatsoever for personal injury (including death) or property damage or otherwise asserted by a third party (a "Claim") that arises from or out of any event or circumstance first occurring or existing during the period when control and title to the Products is vested in such Party or which is in any manner connected with the performance of this Agreement by such Party, except to the extent that such Claim may be attributable to the gross negligence or willful misconduct of the Party seeking to be indemnified.

13.4 Either Party may be involved in an action and intend to seek indemnity under this Article 13 from the other Party. If so, the Party seeking indemnity must give prompt notice of the pendency of the action to the other Party. Whether or not notice is given, any Party from whom indemnity might be sought may, but need not, participate in the action for which the indemnity is requested with separate counsel and may assert all defenses available to it.

ARTICLE 14. FORCE MAJEURE

14.1 Each Party shall conform to Good Industry Practice in performing its obligations hereunder. Neither Party shall be considered to be in default with respect to any

obligation hereunder if prevented or delayed in a material respect from fulfilling such obligation by fire, strikes or other labor difficulties, casualties, civil or military authority, civil disturbance or riot, war, acts of God, acts of public enemy, drought, earthquake, flood, explosion, hurricane, lightning, landslide, or similar cataclysmic occurrence, or if NEPOOL or ISO-NE experiences unplanned-for emergency system conditions, including but not limited to a shortage of available electric generating capacity or an insufficiency of transmission or distribution facilities required for the delivery of Products, such that NEPOOL or ISO-NE either must suspend the supply of one or more of the Products or must curtail or interrupt all or a portion of the Products, or other event beyond the reasonable control of the Party affected ("Force Majeure"); *provided, however*, that the price or pricing structure of any Product or any applicable fuel or energy source shall not be considered a Force Majeure event.

14.2 If either Party is rendered wholly or partly unable to perform its obligations under this Agreement because of Force Majeure, that Party shall be excused from whatever performance is affected by the Force Majeure to the extent so affected; *provided, that* payments due hereunder from either Party to the other when due shall not be excused by Force Majeure (unless the Party's inability to pay arises from a Force Majeure event affecting such Party's payment mechanism or the banking system as a whole); *and provided, further*, that:

(a) The non-performing Party promptly, but in no case later than five (5) Business Days after the occurrence of the Force Majeure, gives the other Party notice describing the particulars of the occurrence describing, in detail, the nature, extent and expected duration of the Force Majeure;

(b) The suspension of performance shall be of no greater scope, and of no longer duration, than is reasonably required by the Force Majeure; and

(c) The non-performing Party uses commercially reasonable efforts to remedy its inability to perform.

14.3 Neither Party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, is contrary to its interest, it being understood and agreed that the settlement of strikes, walkouts, lockouts or other labor disputes shall be entirely within the discretion of the Party having such difficulty.

ARTICLE 15. LIMITATION OF LIABILITIES

15.1 Neither Party shall be liable to the other Party in connection with this Agreement for any special, indirect, incidental, consequential, punitive or exemplary damages of any kind, including but not limited to loss of use, and lost profits (past or future), by statute, in tort or contract, under any indemnity provision, or otherwise.

ARTICLE 16. REPRESENTATIONS AND WARRANTIES

16.1 Seller hereby represents and warrants to PSNH as follows:

16.1.1 Seller has full power and authority to execute and deliver this Agreement, and Seller shall continue to have full power and authority to perform its obligations hereunder, and to consummate the transactions contemplated hereby during the Term of this Agreement. The execution and delivery of this Agreement by Seller and the consummation by it of the transactions contemplated hereby have been duly and validly authorized by all necessary action required on its part and this Agreement has been duly and validly executed and delivered by Seller. For the Term of this Agreement, Seller agrees that this Agreement shall constitute Seller's legal, valid and binding agreement, enforceable against Seller in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally and general principles of equity (regardless of whether enforcement is considered in a proceeding at law or in equity).

16.1.2 Neither the execution and delivery of this Agreement by Seller nor the consummation by Seller of the transactions contemplated hereby during the Term of this Agreement will (i) conflict with or result in any breach or violation of any provision of the enabling legislation, bylaws, certificate of formation, LLC agreement, and any other applicable governing or formation documents of Seller, (ii) result in a default (or give rise to any right of termination, consent, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, material agreement or other instrument or obligation to which Seller is a party or by which it may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained; or (iii) constitute violations of any law, regulation, order, judgment or decree applicable to Seller.

16.1.3 Except for the Seller Required Approvals, which Approvals Seller agrees to obtain in order to satisfy the Prerequisites for Purchases set forth in Article 4, no consent or approval of, filing with, or notice to, any governmental authority by or for Seller is necessary for the execution and delivery of this Agreement by it, or the consummation by it of the transactions contemplated hereby.

16.1.4 Seller agrees that during the Term of this Agreement, Seller shall comply with any and all filing and notice requirements, conditions or orders made part of, included with or subsequently added to Seller Required Approvals. Seller further agrees, during the Term of this Agreement, to fully comply with its organizational and governing documents and determinations of any governmental instrumentality applicable to Seller.

16.2 PSNH hereby represents and warrants to Seller as follows:

16.2.1 PSNH is a corporation organized and validly existing under the laws of the State of New Hampshire.

16.2.2 PSNH has full corporate power and authority to execute and deliver this Agreement, and PSNH shall continue to have full power and authority, to perform its obligations hereunder and to consummate the transactions contemplated hereby during the Term of this Agreement. Upon the fulfillment of all of the prerequisites for purchases set forth in Article 4, the execution and delivery of this Agreement by PSNH and the consummation by it of the transactions contemplated hereby have been duly and validly authorized by all necessary corporate action required on its part and this Agreement has been duly and validly executed and delivered by PSNH. For the Term of this Agreement, PSNH agrees that this Agreement shall constitute PSNH's legal, valid and binding agreement of PSNH, enforceable against PSNH in accordance with its respective terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally and general principles of equity (regardless of whether enforcement is considered in a proceeding at law or in equity).

16.2.3 Subject to any required FERC acceptance and approval of the Interconnection Agreement under the Federal Power Act and FERC's Rules of Practice and Procedure, neither the execution and delivery of this Agreement by PSNH, nor the consummation by PSNH of the transactions contemplated hereby during the Term of this Agreement will (i) conflict with or result in any breach or violation of any provision of the certificate of incorporation or bylaws of PSNH, (ii) result in a default (or give rise to any right of termination, consent, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, material agreement or other instrument or obligation to which PSNH is a party or by which it may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained; or (iii)constitute violations of any law, regulation, order, judgment or decree applicable to PSNH.

16.2.4 Except for any required FERC acceptance and approval of the Interconnection Agreement under the Federal Power Act and FERC's Rules of Practice and Procedure and except for the NHPUC final decision referenced in Section 4.1.3, no consent or approval of, filing with, or notice to, any governmental authority by or for PSNH is necessary for the execution and delivery of this Agreement by it, or the consummation by it of the transactions contemplated hereby.

ARTICLE 17. ASSIGNMENT

17.1 This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns. Except as specified below and in Article 7, the rights and obligations of the Parties to this Agreement may not be assigned by

either Party without the prior written consent of the other Party, which consent shall not unreasonably be withheld, conditioned, delayed or denied; provided, however, that no assignment authorized pursuant to this Article 17 shall release the Assigning Party from any of its obligations under this Agreement unless a written release is executed by the non-assigning Party in the non-assigning Party's sole discretion. As a condition of its consent, any person to whom an assignment is made shall be required to demonstrate, to the reasonable satisfaction of the non-assigning Party, that it is capable of fulfilling the assigning Party's obligations hereunder.

17.2 Notwithstanding Section 17.1, PSNH shall have the right to assign, without the consent of Seller and without recourse to PSNH, all or any part of PSNH's interest and obligations hereunder to any regulated affiliated New Hampshire electricity distribution company of equivalent or better creditworthiness.

17.3 Notwithstanding Section 17.1, Seller shall have the right to assign, without the consent of PSNH, its rights and interests hereunder, including any right to receive payments under this Agreement, to any bank, insurance company, capital fund or similar financial institution or entity providing financing to Seller (including a sale/leaseback financing), *provided that* no such assignment shall relieve Seller of responsibility or liability for the due performance of this Agreement. PSNH agrees, upon receipt of a written request from Seller, to execute a commercially reasonable consent to any such collateral assignment by Seller providing for, among other things, simultaneous notices to Facility capital providers, a right (but not obligation) of such capital providers to cure any Seller default hereunder, and the directing of payments due Seller hereunder directly to such capital providers.

17.4 Any purported assignment not in compliance with this Article 17 shall be null and void.

17.5 **Assignment.** PSNH hereby consents to the assignment by LBB of all right, title and interest of LBB in and to the Original PPA to Seller. PSNH and Seller hereby amend and restate the Original PPA, the terms of which are superseded in their entirety by the terms of this Agreement.

ARTICLE 18. TRANSFER OF OWNERSHIP

18.1 Except in connection with a sale/leaseback financing in which Seller remains in control of Facility operations, during the Term hereof, Seller shall not sell or transfer ownership of the Facility without prior written approval of PSNH, which approval shall not be unreasonably withheld or delayed so long as the purchasing entity agrees to assume and be bound by the terms of this Agreement.

ARTICLE 19. AUDIT RIGHTS

19.1 PSNH and Seller shall each have the right throughout the Term and for a period of three (3) years following the end of the Term, upon reasonable prior notice, to audit copies of relevant portions of the books and records of the other Party to the limited extent necessary to verify the basis for any claim by a Party for payment from the

other Party or to determine a Party's compliance with the terms of this Agreement. The Party requesting the audit shall pay the other Party's reasonable costs allocable to such audit.

ARTICLE 20. GOVERNMENT ACTIONS

20.1 Seller and PSNH shall at all times comply with all valid and applicable federal, state and local laws, rules, regulations and orders in connection with the performance of their respective obligations under this Agreement.

20.2 Seller shall use commercially reasonable efforts to obtain and retain any permits, licenses, approvals or other governmental authorizations required for the construction and operation of the Facility and Seller's performance pursuant to this Agreement for the Term. PSNH shall cooperate with Seller to obtain and retain such permits, licenses, approvals and authorizations to the extent reasonably requested by Seller, but only to the extent that PSNH does not incur any unreasonable costs in connection with that cooperation.

ARTICLE 21. NOTICES

21.1 All notices, including communications and statements which are required or permitted under the terms of this Agreement, shall be in writing, except as otherwise provided or as reasonable under the circumstances. Service of a notice may be accomplished and will be deemed to have been received by the recipient Party on the day of delivery if delivered by personal service, on the day of confirmed receipt if delivered by telegram, registered or certified commercial overnight courier, or registered or certified mail or on the day of transmission if sent by telecopy or email with evidence of receipt obtained, to each Party at the following addresses:

To PSNH: Public Service of New Hampshire
Public Service Company of New Hampshire
PSNH - Energy Park
780 N. Commercial Street
P. O. Box 330
Manchester, NH 03105-0330
Attn.: Manager, Supplemental Energy Sources Department
Phone: (603) 634-2931
Fax: (603) 634-2449
Email: psnhsesd@psnh.com

With an additional notice to Buyer of an Event of Default to:

Public Service Company of New Hampshire
PSNH - Energy Park
780 N. Commercial Street
Manchester, New Hampshire 03101
Attention: Assistant General Counsel
Fax: (603) 634-2438
Phone: (603) 634-3355

To Seller: Berlin Station, LLC
c/o Cate Street Capital, Inc.
One Cate Street
Portsmouth, New Hampshire 03801-7108
Phone: (603) 319-4400
Fax: (603) 584-1315

21.2 The designation of such persons and/or address may be changed at any time by either Party upon notice given pursuant to the requirements of this Section.

ARTICLE 22. GOVERNING LAW; VENUE

22.1 **Governing Law.** Interpretation and performance of this Agreement shall be in accordance with, and shall be controlled by, (i) the laws of the State of New Hampshire other than any conflicts of law provision, the effect of which would be to apply the substantive law of a state other than the State of New Hampshire to the governance and construction of this Agreement; (ii) Part II of the Federal Power Act, 16 U.S.C. §§824d *et seq.*; (iii) Part 35 of Title 18 of the Code of Federal Regulations, 18 C.F.R. §§ 35 *et seq.*; and (iv) present and future laws and present and future regulations or orders properly issued by local, state, or federal bodies having jurisdiction over the matters set forth herein.

22.2 **Venue.** Subject to Article 25, Dispute Resolution, any dispute arising out of this Agreement shall be brought in a court of competent jurisdiction located in Manchester in the State of New Hampshire. Each Party irrevocably waives any objection which it may have to the venue of any proceeding brought in any such court and waives any claim that such proceedings have been brought in an inconvenient forum.

ARTICLE 23. CHANGE IN LAW

23.1 **Change in Law.** If, during the Term, a Change in Law occurs or any of the ISO-NE Documents are changed, resulting in elimination of or a material adverse affect upon a material right or obligation of a Party, then unless such Change in Law is otherwise specifically addressed herein, the Parties will negotiate in good faith in an attempt to amend this Agreement to incorporate such changes as they mutually deem necessary to reflect the Change in Law or the change in any ISO-NE Documents. The intent of

the Parties is that any such amendment reflects, as closely as possible, the intent and substance of the economic bargain before the Change in Law or the change in any ISO-NE Documents. If the Parties are unable to reach agreement on such an amendment, the Parties agree to resolve the matter pursuant to the terms of Article 25 of this Agreement.

ARTICLE 24. FERC AND NHPUC REVIEW; CERTAIN COVENANTS AND WAIVERS

24.1 It is the intention of the Parties that neither Seller nor PSNH shall have the unilateral right to make a filing with FERC under any section of the Federal Power Act, or with the NHPUC, seeking to change the charges or any other terms or conditions set forth in this Agreement for any reason. The preceding sentence shall not prevent (i) either Party from participating in or initiating any proceeding at FERC concerning a change to the ISO-NE Documents that impact this Agreement or (ii) PSNH from seeking NHPUC review and/or approval of any material discretionary actions to be taken by PSNH in performing under this Agreement, such as PSNH's exercise or transfer of the Purchase Option Agreement, transfer of the Cumulative Reduction, transfer of the Right of First Refusal, or incurrence of expenditures under Article 8 hereof.

24.2 It is the intention of the Parties that any authority of FERC or the NHPUC to change this Agreement shall be strictly limited to that authority which applies when the Parties have irrevocably waived their right to seek to have FERC or the NHPUC change any term of this Agreement.

24.3 FERC Standard of Review; Certain Covenants and Waivers.

24.3.1 Absent the agreement of all Parties to a proposed change, the standard of review for changes to any section of this Agreement specifying the pricing or other material economic terms and conditions agreed to by the Parties herein, whether proposed by a Party, a non-party or FERC acting sua sponte, shall solely be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish, 128 S.Ct. 2733 (June 26, 2008) (the "*Mobile-Sierra*" doctrine).

24.3.2 The Parties, for themselves and their successors and assigns, (i) agree that the "public interest" standard of review shall apply to any proposed changes in any other documents, instruments or other agreements executed or entered into by the Parties in connection with this Agreement, and (ii) hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the "just and reasonable" standard.

24.3.3 Notwithstanding the foregoing Sections 24.3.1 and 24.3.2, to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns,

hereby also expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC, or to support another in obtaining, by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, or support another in obtaining, an order from FERC changing any section of this Agreement specifying the pricing, charges, classifications or other economic terms and conditions agreed to by the Parties. It is the express intent of the Parties that, to the fullest extent permitted by applicable law, the "sanctity of contract" principles acknowledged by FERC in its Notice of Proposed Policy Statement (issued August 1, 2002) in Docket No. PL02-7-000, Standard of Review for Proposed Changes to Market-Based Rate Contracts for Wholesale Sales of Electric Energy by Public Utilities, shall prevail, notwithstanding any changes in applicable law or markets that may occur. In the event it were to be finally determined that applicable law precludes one or both Parties from waiving its rights to seek changes from FERC to its market-based power sales contracts (including entering into covenants not to do so) then this Section 24.3.3 shall not apply, *provided that*, consistent with Section 24.3.1, neither Party shall seek any such changes except under the "public interest" standard of review and otherwise as set forth in Section 24.3.1.

24.3.4 The Parties agree that in the event that any portion of this Section 24.3 is determined to be invalid, illegal or unenforceable for any reason, the remaining provisions of Section 24.3 shall be unaffected and unimpaired thereby, and shall remain in full force and effect, to the fullest extent permitted by applicable law.

ARTICLE 25. DISPUTE RESOLUTION

25.1 **Negotiation Between Executives.** The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. Any Party may give the other Party notice of any dispute not resolved in the normal course of business. Such notice shall include: (a) a statement of that Party's position and a summary of arguments supporting that position; and (b) the name and title of the executive who will be representing that Party and of any other person who will accompany the executive ("Initial Notice"). Within five (5) Business Days after delivery of the Initial Notice, the receiving Party shall respond with: (a) a statement of that Party's position and a summary of arguments supporting that position; and (b) the name and title of the executive who will represent that Party and of any other person who will accompany the executive. Within ten (10) Business Days after delivery of the Initial Notice, the executives of both Parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. All reasonable requests for information made by one Party to the other will be honored. All negotiations pursuant to this clause are confidential and shall be treated as

compromise and settlement negotiations for purposes of applicable rules of evidence.

25.2 Mediation. If the dispute has not been resolved by negotiation within twenty (20) Business Days of the disputing Party's Initial Notice, or if the Parties failed to meet within five (5) Business Days of the delivery of the Initial Notice, the Parties shall endeavor to settle the dispute by mediation under the then-current CPR Mediation Procedure. Unless otherwise agreed, the Parties will select a mediator from the CPR Panels of Distinguished Neutrals.

25.3 Arbitration. Except in cases where the dispute is subject to NHPUC and/or FERC jurisdiction, any dispute arising out of or relating to this Agreement, including the breach, termination or validity thereof, which has not been resolved by one of the non-binding procedures set forth in Sections 25.1 and 25.2 within thirty (30) Business Days of the delivery of Initial Notice, shall be finally resolved by binding arbitration in accordance with the then-current CPR Rules for Non-Administered Arbitration (the "CPR Rules") by a sole arbitrator, for disputes involving amounts in the aggregate under three million dollars ($3,000,000), or three arbitrators, for disputes involving amounts in the aggregate equal to or greater than three million dollars ($3,000,000), of whom each Party shall designate one in accordance with the "screened" appointment procedure provided in Rule 5.4 of the CPR Rules; *provided, however,* that if either Party will not participate in a non-binding procedure, the other may initiate arbitration before expiration of the above period. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16, with appeals limited to the grounds expressed therein, and judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The place of arbitration shall be Manchester, New Hampshire. The arbitrator(s) are not empowered to award damages in excess of compensatory damages and each Party expressly waives and forgoes any right to punitive, exemplary or similar damages unless a statute requires that compensatory damages be increased in a specified manner.

25.4 The fees and expenses associated with mediation and arbitration, including the costs of arbitrators, shall be divided equally between the Parties. Each Party shall be responsible for its own legal fees, including but not limited to attorney fees. The Parties may, by written agreement signed by both Parties, alter any time deadline, location(s) for meeting(s), or procedure outlined herein or in the CPR Rules. The procedure specified herein shall be the sole and exclusive procedure for the resolution of disputes arising out of or related to this Agreement. To the fullest extent permitted by law, any resolution, mediation or arbitration proceeding and the settlement or arbitrator's award shall be maintained in confidence by the Parties.

25.5 **WAIVER OF JURY TRIAL. EACH PARTY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF, RESULTING FROM OR IN ANY WAY RELATING TO THIS AGREEMENT.**

ARTICLE 26. MISCELLANEOUS

26.1 **Confidentiality.** The terms of this Agreement, and any other information exchanged by PSNH and Seller relating to this Agreement, shall not be disclosed to any person not employed or retained by the PSNH or Seller or their Affiliates, except to the extent disclosure is (1) required by law, required to be made to any governmental authority for obtaining any approval, permits and licenses, or making any filing in connection therewith, required by the Interconnection Agreement or delivered by Seller to ISO-NE or to any Person exercising authority over Seller or the Facility for the purpose of maintaining the safety or reliability of the electric system into which the Energy output is delivered, (2) reasonably deemed by the disclosing Party to be required to be disclosed in connection with a dispute between or among the Parties, or the defense of any litigation or dispute, or any financing related to the Facility, (3) otherwise permitted by consent of the other Party, which consent shall not be unreasonably withheld, (4) required to be made in connection with regulatory proceedings (including proceedings relating to FERC, the United States Securities and Exchange Commission or any other federal, state or provincial regulatory agency) or pursuant to the rules or regulations of any stock exchange to which a Party or any of its Affiliates are bound. In the event disclosure is made pursuant to this provision, the Parties shall use reasonable efforts to minimize the scope of any disclosure and have the recipients maintain the confidentiality of any documents or confidential information covered by this provision, including, if appropriate, seeking a protective order or similar mechanism in connection with any disclosure. This provision shall not apply to any information that was or is hereafter in the public domain (except as a result of a breach of this provision). The Parties specifically agree that any press release or other public statement that addresses specific commercial terms of this Agreement shall be mutually agreed upon and the text thereof approved by the Parties.

26.2 **Project Financial Information.** Seller agrees to provide project financial information related to the Facility as reasonably requested from time to time by PSNH in order to meet PSNH's FASB, SEC and FERC accounting and reporting requirements.

26.3 **Severability.** The provisions of this Agreement are severable. To the extent that any provision hereof is determined to be invalid pursuant to any applicable statute or rule of law, such invalidity shall not affect any other provision hereof, and this Agreement shall be interpreted as if such invalid provision were not a part hereof.

26.4 **Waiver.** No waiver by either Party of the performance of any obligation under this Agreement or with respect to any default or any other matter arising in connection with this Agreement shall be deemed a waiver with respect to any subsequent performance, default or matter.

26.5 **Survivability.** This Agreement shall survive termination, expiration, cancellation, suspension, or completion of the agreements set forth herein to the extent necessary to allow for final accounting, final billing, billing adjustments, resolution of any billing dispute, resolution of any court or administrative proceeding and final

payments. All billing verification rights and confidentiality obligations shall survive for two (2) years beyond the applicable terms, and indemnification provisions shall survive for the full statutory period allowable by applicable law.

26.6 **No Duty to Third Parties.** Nothing in this Agreement nor any action taken hereunder is intended to or shall be construed to create any duty, liability or standard of care to or from any person not a Party to this Agreement. However, lenders to the Seller or to the Facility may have the option to perform certain Seller obligations as defined more fully under the terms of the financing documents related to the Facility.

26.7 **Amendment.** No amendment of all or any part of this Agreement shall be valid unless it is reduced to writing and signed by both Parties and, in the case of a material amendment, approved by the NHPUC.

26.8 **Complete and Full Agreement.** This Agreement sets forth the entire agreement of the Parties with respect to the subject matter herein, and takes precedence over all prior understandings between the Parties, and binds and inures to the benefit of the Parties, their successors and assigns.

26.9 **Counterparts.** Any number of counterparts of this Agreement may be executed and each shall have the same force and effect as the original.

IN WITNESS WHEREOF, PSNH and Seller have caused this Agreement to be executed by their respective duly authorized officers as of the date first above written.

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

By: _____

Name: Gary A. Long

Gary A. Long

Title: President and Chief Operating Officer

BERLIN STATION, LLC

By: _____

Name: Robert Desrosiers

Title: VP of its Manager Cate Street Capital Inc.

LAIDLAW BERLIN BIOPOWER, LLC

By: _____

Name: Robert Descoteaux

Title: Manager

APPENDIX A

DESCRIPTION OF FACILITY

The Facility will be located at the former Fraser Paper Mill located at Commercial Street in Berlin, NH (the "Project Site"). The Facility is expected to utilize Biomass Fuel as its primary fuel. The Facility will be designed and operated as a NH Class I renewable energy source.

APPENDIX B

FORM OF PURCHASE OPTION AGREEMENT

This PURCHASE OPTION AGREEMENT (this "Option Agreement") is made as of _____, 20__ (the "Effective Date") by and between **Public Service Company of New Hampshire**, a New Hampshire corporation ("PSNH"), **Berlin Station, LLC,** a Delaware limited liability company ("Site Owner" or "Berlin Station"), and **Burgess Biopower, LLC,** a Delaware limited liability company ("Burgess"). PSNH, Site Owner and Burgess (together with their respective successors and assigns) are the "Parties" and each individually is a "Party" to this Option Agreement.

RECITALS:

A. Site Owner is developing a biomass fueled electric generating facility having a gross generating capacity output of approximately 70 megawatts (the "Facility") located on an approximately sixty-two (62) acre site in Berlin, New Hampshire, as more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Facility Site"). For purposes of this Option Agreement, the Facility Site includes all land described in Exhibit "A" and all easements, rights and other real estate interests appurtenant thereto, whether now owned or hereafter acquired by Site Owner, for the use or benefit of the Facility Site and the Facility, and the Facility includes all equipment, generators, boilers, transformers, switching equipment, transmission lines, and other fixtures, trade fixtures, together with articles of personal property necessary to or convenient for the operation of the Facility.

B. Site Owner is the sole owner in fee simple of the Facility Site and the Facility under the deed or deeds recorded in the Coos County Registry of Deeds at Book 1265, Page 1025. The Facility Site is a separate tax and zoning lot (or lots) on the zoning and tax assessment records of the City of Berlin, designated as Tax Map: 129, Parcel: 54.01, 54.001.

C. Burgess is the lessee of the Facility Site and the Facility.

D. Burgess and Site Owner anticipate that subsequent to the execution and recording of this Option Agreement, Site Owner will continue to be the sole owner in fee simple of, and will lease the Facility and Facility Site to Burgess under a sale/leaseback financing arrangement, with all such arrangements being expressly made subject and subordinate to PSNH's rights hereunder.

E. PSNH, LBB and Berlin Station, LLC have entered into a certain Amended and Restated Power Purchase Agreement dated as of May 18, 2011 (the "Amended PPA") under which PSNH has agreed to purchase the Facility output conditioned upon, among other things, the execution and recording of this Option Agreement.

NOW THEREFORE, in consideration of PSNH's promises to purchase the "Products" (as defined in the PPA) of the Facility at the prices and under the terms of the Amended PPA, and other good and valuable consideration, the Parties agree as follows:

1. **Grant of Option.** Site Owner hereby grants to PSNH, and its successors and assigns, for the fixed period co-extensive with the fixed period of the twenty (20) "Operating Years" from the "In-Service Date" (as defined under the Amended PPA), an exclusive, irrevocable option (the "Option") to purchase the Facility and the Facility Site (together, the "Facility Assets") within the Option Exercise Period hereafter stated and subject to the purchase conditions and terms hereafter stated. Upon the exercise of the Option by PSNH, this Option Agreement shall constitute the agreement of sale and purchase between the Parties with respect to the Facility Assets. Burgess hereby takes and confirms notice of the Option as an interest in the Facility and Facility Site that is prior in right to any leasehold or other estate granted to Burgess by Site Owner.

2. **Option Exercise Period and Termination.**

(a) Except as otherwise provided herein, the "Option Exercise Period" shall commence on the date that is the day after the 20th anniversary date of the designated "In-Service Date" under the Amended PPA and shall extend for one hundred and twenty (120) days. This Option Agreement shall terminate upon the expiration or termination of the Option Exercise Period; provided that if the Option is exercised as provided herein within the Option Exercise Period, then this Option Agreement shall remain in effect to the extent necessary to complete the transactions contemplated hereunder.

(b) Notwithstanding the forgoing, Site Owner may terminate this Option Agreement and the Option without further obligation of any Party at any time subsequent to a valid termination of the Amended PPA by Berlin Station pursuant to Section 12.1.1 of the Amended PPA. This Option Agreement shall otherwise remain in full force and effect as set forth in Section 2(a) above.

3. **Exercise of Option.** In order to exercise the Option, PSNH shall provide a written notice to the Site Owner (or any successor thereof of record) within the Option Exercise Period, which notice shall include a statement of the value of the Cumulative Reduction (as defined in the Amended PPA) existing as of the date of expiration or termination of the Amended PPA. PSNH shall provide such information as Site Owner shall reasonably request supporting the calculation of the Cumulative Reduction. Any disagreement between the Parties as to the calculation of such Cumulative Reduction value will be resolved as per Section 12 below, but no such request for supporting information or dispute shall negate the effectiveness of PSNH's notice of the exercise of the Option. If PSNH exercises the Option within the Option Exercise Period, then the Parties will use diligent and good faith efforts to close on the transfer of the Facility Assets to PSNH as soon as reasonably practicable, and in no case later than one hundred eighty (180) days from PSNH's notice exercising the Option.

4. **Purchase Price.**

(a) The "Purchase Price" for the Facility Assets pursuant to the Option shall equal (i) the fair market value of the Facility Assets as of commencement of the Option Exercise Period (assuming the Facility Assets are sold free of all financing liens and encumbrances) less (ii) any Cumulative Reduction value (expressed as a positive number for purposes of this calculation), provided that the Purchase Price shall not be less than zero.

(b) If the Parties are unable to establish a mutually-agreeable fair market valuation for the Facility Assets within the first twenty (20) days after the exercise of the Option, then PSNH and Site Owner shall each select two (2) qualified independent commercial appraisers to provide a fair market valuation of such Facility Assets. The highest and lowest of the resulting four (4) appraisal valuations shall be discarded, and the remaining two (2) valuations shall be averaged to arrive at a binding fair market value for the Facility Assets as soon as practicable (and no later than 70 days after the exercise of the Option). Any disputed and unresolved issues, other than establishment of the Purchase Price, shall be submitted for dispute resolution in accordance with Section 12 below. The appraisals shall be based on the value of the highest and best use of the Facility Assets for their then existing use as an electric generating facility (whether as an operational facility or otherwise), and will not take into account the existence of this Option Agreement, the status or value of the Amended PPA, or the Cumulative Reduction.

5. **Due Diligence, Inspection and Investigation.**

(a) At any time during the Option Exercise Period, at the request of PSNH, or its duly authorized agents, contractors or consultants, Site Owner and Burgess will promptly provide PSNH with access to all documents and records in their possession regarding the Facility Assets and their operation, including (but not limited to) permits, licenses, contracts, leases, project documents, material warranties, operational reports, invoices, financial statements, operational books and records, maintenance and repair records, property tax bills, surveys, agreements with governmental agencies, environmental site assessments, engineering studies or reports, plans, and other documents or reports of whatever nature or description and relating to the Facility Assets and reasonably required by PSNH to evaluate the condition of, title to, and operational economics of the Facility Assets.

(b) At any time during the Option Exercise Period, PSNH, or its duly authorized agents, contractors or consultants, at its own expense may enter and inspect, examine, test and assess the Facility Assets, including, but not limited to, the soil, subsoil, topography, existing fill, drainage, surface and groundwater quality, air and water rights, availability of utilities, zoning, legal compliance, access, suitability, assessments, encroachments, environmental matters, flood plain analysis, wetland requirements, title matters, taxes and all other inspections deemed necessary, desirable or appropriate by PSNH, and Site Owner and Burgess shall fully cooperate with PSNH in promptly providing access to the Facility Assets for such purposes.

(c) In making any entry pursuant to paragraph (b) above, PSNH and its agents, employees, contractors and representatives shall: (i) enter upon the Facility and the Facility Site at their own risk; (ii) conduct all activities on the Facility and the Facility Site in such a way as to minimize damage to the Facility Assets or disruption of Facility operations, indemnify Site Owner and Burgess for any actual damages caused by entry activities and remedy the effects of such entry on the Facility and Facility Site; and (iii) conduct all activities on the Facility and the Facility Site under commercially appropriate liability insurance and at the sole cost and expense of PSNH. Each of Burgess and Site Owner shall cause its officers, employees and any other person operating or otherwise in possession of the Facility Assets to provide entry to the Facility and the Facility Site to PSNH and its duly authorized agents, contractors and consultants, for the purposes described in this Option Agreement.

(d) Notwithstanding anything to the contrary contained in this Option Agreement, PSNH reserves the right to review and consider the results of its due diligence inspections and investigations of the Facility Assets, and to determine whether and to what extent the results of same are satisfactory to PSNH, or not, in its sole and absolute discretion.

6. **Title and Title Insurance.**

(a) Concurrently with the execution of this Option Agreement and a recording of a memorandum thereof, Site Owner and Burgess, at their sole cost and expense, shall be required to obtain and provide to PSNH a policy of title insurance issued by a nationally recognized title insurance company, in form and content acceptable to PSNH insuring PSNH's interest in and under this Option Agreement as of the Effective Date, free of all secured lending arrangements, mortgages, leaseholds and other liens and encumbrances upon the Facility and Facility Site as of the Effective Date, and subject only to those existing easements, covenants and restrictions of record as PSNH shall determine after suitable review and in its sole discretion are acceptable as necessary or appropriate to operate or maintain the Facility on the Facility Site, will not materially interfere with or restrict such operation or maintenance, or are otherwise acceptable (the "Permitted Encumbrances"). The amount of such title insurance shall be Forty Seven Million Dollars ($47,000,000), and shall include an endorsement to coverage affirmatively insuring the Option Agreement and PSNH's interest thereunder against unenforceability or other loss due to or resulting from violation of the New Hampshire Rule Against Perpetuities. A Commitment of Title Insurance shall be provided to PSNH prior to execution of this Option Agreement and the recording of a memorandum thereof, to allow for PSNH's suitable review to determine compliance with this provision.

(b) All secured lending arrangements, mortgages, leaseholds and other liens and encumbrances upon the Facility Site and other Facility Assets as of the Effective Date shall be discharged or fully subordinated to PSNH's rights under this Option Agreement. Subsequent to the Effective Date, Site Owner may grant or allow, without PSNH's consent but with notice to PSNH, any mortgage, security interest, leasehold, or other lien, encumbrance, or conveyance of or upon the Facility Assets that it determines

necessary or appropriate in connection with the financing and operations of the Facility Assets (the "Subsequent Encumbrances"); *provided*, that all such Subsequent Encumbrances shall remain subject and subordinate to the prior Option rights of PSNH hereunder. PSNH may require that the holder of any Subsequent Encumbrance confirm PSNH's prior rights hereunder. PSNH will not unreasonably withhold its consent to the subordination of its rights hereunder to a Subsequent Encumbrance that is not a mortgage, grant of any security interest, leasehold or other similar lien, and is necessary or appropriate to operate or maintain the Facility Assets, such as third party utility or service easements. Nothing in this Option Agreement shall act as a restraint on the sale or transfer of the Facility Assets; *provided,* that any such sale or transfer shall remain expressly subject to PSNH's rights hereunder, which rights shall be binding on any subsequent owner of any Facility Asset.

(c) During the Option Exercise Period, PSNH shall be entitled, at its sole cost and expense, to examine the title to the Facility Assets and to obtain a commitment from a title insurance company acceptable to PSNH evidencing satisfactory title vested in the Site Owner as of the effective date thereof, and pursuant to which such title insurance company agrees to issue to PSNH, in form and content acceptable to PSNH, an owner's policy of title insurance, for an amount not less than the Purchase Price to be determined hereunder, at standard premium rates, and subject only to the standard policy coverage terms, conditions, exceptions and exclusions, but excepting the Permitted Encumbrances and those new or additional existing easements, covenants and restrictions of record, if any, as PSNH shall determine after suitable review in its sole discretion are acceptable as necessary or appropriate to operate or maintain the Facility on the Facility Site, will not materially interfere with or restrict such operation or maintenance, or are otherwise acceptable (the "Additional Permitted Encumbrances").

7. **Conveyance of Title.** At closing on transfer of the Facility Assets pursuant to an exercise of the Option, Site Owner shall cause to be executed and delivered to PSNH or its successor or assignee a quitclaim deed or deeds, and such assignments, bills of sale and other customary conveyance documents, all in form and content acceptable to PSNH and its title insurer, as are necessary for conveying good and insurable title to the Facility Assets free from all defects, liens, security interests, easements, restrictions, covenants, encroachments, and any other encumbrances, except: (i) real estate taxes and assessments not yet due and payable; (ii) the Permitted Encumbrances and the Additional Permitted Encumbrances, if any; and (iii) such other matters as may be consented to or waived in writing by PSNH at any time prior to such closing. In connection with any such closing, Site Owner and/or Burgess shall cause to be transferred to PSNH (to the extent assignable or transferable) by such transfer instruments as shall in form and content be acceptable to PSNH all other personal and intangible property held or controlled by either of them with respect to the Facility or Facility Site, including but not limited to permits, authorizations, exemptions, agreements, vehicles, tools, inventory and spare parts. All Facility Assets will be transferred on an "as is" basis without warranties as to physical condition.

8. **Closing Expenses and Apportionments.**

(a) All real estate and personal property taxes and assessments, including all unpaid portions of any general or special assessments, levied or assessed against the Facility and the Facility Site ("Taxes"), shall be apportioned between the Parties as of the closing in accordance with closing practice in Coos County, New Hampshire.

(b) Unless otherwise specified herein, all Taxes that are the subject of a statutory lien on the Facility or the Facility Site as of the closing shall be paid by the Site Owner.

(c) Site Owner shall pay for (i) costs to discharge or clear any unpermitted liens or encumbrances, (ii) the costs of any appraisals it is required to provide under Section 5(b); (iii) the costs of its own legal and accounting fees; (iv) one half of the NH Real Estate Transfer Tax; and (v) all fees and costs associated with the transfer or assignment of all permits, licenses and approvals then in effect with respect to the Facility and its operations ("Facility Authorizations").

(d) PSNH shall pay for (i) one half of the NH Real Estate Transfer Tax, (ii) closing title searches and title insurance premium for any Owner's Policy, (iii) the costs of any appraisals it is required to provide under Section 5(b); (iv) the costs of its own legal and accounting fees; and (v) the cost of obtaining any authorization required for PSNH to exercise the Option and take assignment of the Facility Assets, including any assigned Facility Authorizations.

9. **Representations, Warranties, and Covenants of the Parties.** Each Party hereby represents and warrants to the other Parties as follows as of the Effective Date:

(a) Such Party is not a party to any contract or agreement of any kind whatsoever, written or verbal, which would materially impair its ability to comply with the terms of this Option Agreement.

(b) The Party is a duly formed legal entity, validly existing under the laws of the state of its formation, is qualified to do business in the state of New Hampshire, and has all requisite power and authority to enter into this Option Agreement and to render the performance contemplated hereby.

(c) This Option Agreement is the valid and binding obligation of the Party, enforceable in accordance with its terms.

10. **Binding Effect, Assignments.** The terms, covenants and conditions of this Option Agreement shall be binding upon and enforceable by the successors and assigns of the Parties. PSNH may assign its rights hereunder to any third party at any time upon prior written notice to Site Owner and Burgess, such written notice to include a written confirmation of acceptance by the assignee. PSNH may record a memorandum evidencing any such assignment.

11. **Governing Law.** This Option Agreement shall be governed in all respects by the laws of the State of New Hampshire. Any rule against perpetuities under New Hampshire law shall not apply to this Option Agreement.

12. **Dispute Resolution.**

(a) **Negotiation Between Executives.** The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Option Agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. Any Party may give the other Party notice of any dispute not resolved in the normal course of business. Such notice shall include: (a) a statement of that Party's position and a summary of arguments supporting that position; and (b) the name and title of the executive who will be representing that Party and of any other person who will accompany the executive ("Initial Notice"). Within seven (7) days after delivery of the Initial Notice, the receiving Party shall respond with: (a) a statement of that Party's position and a summary of arguments supporting that position; and (b) the name and title of the executive who will represent that Party and of any other person who will accompany the executive. Within fifteen (15) days after delivery of the Initial Notice, the executives of both Parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. All reasonable requests for information made by one Party to the other will be honored. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

(b) Mediation. If the dispute has not been resolved by negotiation within thirty (30) days of the disputing Party's Initial Notice, or if the Parties failed to meet within seven (7) days of the delivery of the Initial Notice, the Parties shall endeavor to settle the dispute by mediation under the then-current CPR Mediation Procedure. Unless otherwise agreed, the Parties will select a mediator from the CPR Panels of Distinguished Neutrals.

(c) Arbitration. Any dispute arising out of or relating to this Option Agreement, including the breach, termination or validity thereof, which has not been resolved by one of the non-binding procedures set forth above within forty five (45) days of the delivery of Initial Notice, shall be finally resolved by binding arbitration in accordance with the then-current CPR Rules for Non-Administered Arbitration (the "CPR Rules") by a sole arbitrator, for disputes involving amounts in the aggregate under three million dollars ($3,000,000), or three arbitrators, for disputes involving amounts in the aggregate equal to or greater than three million dollars ($3,000,000), of whom each Party shall designate one in accordance with the "screened" appointment procedure provided in Rule 5.4 of the CPR Rules; *provided, however,* that if either Party will not participate in a non-binding procedure, the other may initiate arbitration before expiration of the above period. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16, with appeals limited to the grounds expressed therein, and judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction

thereof. The place of arbitration shall be Manchester, New Hampshire. The arbitrator(s) are not empowered to award damages in excess of compensatory damages and each Party expressly waives and forgoes any right to punitive, exemplary or similar damages unless a statute requires that compensatory damages be increased in a specified manner.

The fees and expenses associated with mediation and arbitration, including the costs of arbitrators, shall be divided equally between the Parties. Each Party shall be responsible for its own legal fees, including but not limited to attorney fees. The Parties may, by written agreement signed by all Parties, alter any time deadline, location(s) for meeting(s), or procedure outlined herein or in the CPR Rules. The procedure specified herein shall be the sole and exclusive procedure for the resolution of disputes arising out of or related to this Option Agreement. To the fullest extent permitted by law, any resolution, mediation or arbitration proceeding and the settlement or arbitrator's award shall be maintained in confidence by the Parties.

(d) **WAIVER OF JURY TRIAL. EACH PARTY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF, RESULTING FROM OR IN ANY WAY RELATING TO THIS AGREEMENT.**

13. **Notices.** Any and all notices required to be delivered hereunder shall be deemed properly given if delivered personally, sent by overnight courier or mailed by registered or certified mail, return receipt requested,

To Site Owner:

Berlin Station, LLC (Delaware LLC)
c/o Cate Street Capital, Inc
One Cate Street, Suite 100
Portsmouth, NH 03801
Phone: (603) 319-4400
Fax: (603) 584-1315

with a copy to:

Murray Plumb & Murray
Attention: Christopher Branson
75 Pearl Street
Portland, ME 04104
Fax: (207) 773-8023

To PSNH:

PSNH - Energy Park
780 N. Commercial Street
P. O. Box 330

Manchester, NH 03105-0330
Attn.: Manager, Supplemental Energy Sources Department
Phone: (603) 634-2931
Fax: (603) 634-2449
Email: psnhsesd@psnh.com

with an additional notice to Buyer of an Event of Default to:

Public Service Company of New Hampshire
PSNH - Energy Park
780 N. Commercial Street
Manchester, New Hampshire 03101
Attention: Assistant General Counsel
Fax: (603) 634-2438
Phone: (603) 634-3355

To Burgess Biomass:

c/o Cate Street Capital, Inc
One Cate Street, Suite 100
Portsmouth, NH 03801
Phone: (603) 319-4400
Fax: (603) 584-1315

or to a Party at such address as may be given by notice in accordance with this Section.

14. **Recorded Memorandum.** The Parties agree to execute and record in the Coos County Registry of Deeds a Memorandum of this Option Agreement in the form attached hereto as Exhibit "B".

15. **Termination and Release.** If the Option Term expires or is terminated without PSNH exercising the Option, PSNH agrees to execute and deliver to Burgess and Site Owner an instrument in recordable form confirming the expiration of the Option.

16. **Confirmations.** Each Party hereto will provide the other with such written confirmations as the requesting Party may reasonably request from time to time, including but not limited to the status of title, counterparties to any Subsequent Encumbrances, and the value of any Cumulative Reduction.

17. **Preservation of Facility Assets.** Burgess and Site Owner agree that on and after the Effective Date of this Option Agreement and continuing to either the termination of the Option Exercise Period if the Option is not exercised by PSNH, or to date of closing if so exercised, (i) to keep and maintain the Facility Assets in a functioning operating condition and in a good state of maintenance and repair, subject to reasonable and normal usage and necessary or required maintenance or repair outages,(ii) not to commit or allow waste or other deterioration of the Facility Assets, (iii) not to suffer or allow the creation or existence of any liens or other encumbrance upon the Facility Assets for mechanics lien claims or any unpaid real property taxes or

municipal assessments or charges of any kind, and (iv) and to promptly cause the removal or discharge of any such liens or other encumbrances at any time they may arise.

IN WITNESS WHEREOF, PSNH, Burgess, and Site Owner have caused this Agreement to be executed by their respective duly authorized officers as of the date first above written.

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

By: _____

Name: _____

Title: _____

BURGESS BIOPOWER, LLC

By: _____

Name: _____

Title: _____

BERLIN STATION, LLC

By: _____

Name: _____

Title: _____

Exhibit "A"
Legal Description of Facility Site

PARCEL ONE

A certain tract or parcel of land with buildings and improvements thereon located on the east side of the Androscoggin River, on the west side of Hutchins Street and on the north sides of Coos Street and Community Street in Berlin, Coos County, State of New Hampshire, being shown as **Tax Map 129, Parcel 54.001** on a plan of land entitled "Survey Plat Lands of North American Dismantling Corp. Tax Map 129, Parcel 54.001 and White Mountain Energy, LLC Tax Map 129, Parcel 54.01 Berlin, New Hampshire", dated December 12, 2008 as prepared by York Land Services, LLC, Plan No, 08-045A and recorded as Plan No. 3217, (the "Plan"), being bounded and described as follows:

Beginning at an iron pin marking the most northerly corner of land conveyed to White Mountain Energy, LLC as described in Coos County Registry of Deeds, Volume 1064, Page 249, being near the easterly bank of the Androscoggin River, 119.82 feet northerly of Community Street; thence

Along Public Service Company of New Hampshire the following two courses:

1. N40°33'28"E a distance of 232.47 feet to an iron pin.
2. N35°25'38"W a distance of 32 feet to a point on the east shore of the Androscoggin River; thence

Easterly along the east shore of the Androscoggin River a distance of approximately 2380 feet to a point; thence

S 60°57'44"E along other land of North American Dismantling Corporation a distance of 50 feet to an iron pin; thence continuing

S 60°57'44"E along other land of North American Dismantling Corporation a distance of 1071.24 feet to a point on the westerly sideline of Hutchins Street witnessed by an iron pin with YLS cap, found flush lying S60°57'44"E 0.11 feet distant; thence

Southerly along the westerly sideline of Hutchins Street the following nine courses:

1. Arc of a curve to the right having a length of 37.64 feet to a point; said curve having a radius of 460.00 feet and a long chord of S45°00'49"W, 37.63 feet.

2. S47°21'29"W a distance of 357.82 feet to a point.

3. Arc of a curve to the left having a length of 306.71 feet to a point; said curve having a radius of 2030.11 feet and a long chord of S43°01'47"W, 306.42 feet.

4. S38°42'06"W a distance of 164.40 feet to a point.

5. Arc of a curve to the right having a length of 402.00 feet to a point; said curve having a radius of 594.99 feet and a long chord of S58°03'24"W, 394.40 feet.

6. S77°24'43"W a distance of 374.08 feet to a point.

7. Arc of a curve to the left having a length of 318.73 feet to a point; said curve having a radius of 2030.00 feet and a long chord of S72°54'51"W, 318.40 feet.

8. S68°24'58"W, a distance of 204.80 feet to a point.

9. Arc of a curve to the right having a length of 185.16 feet to a point; said curve having a radius of 270.00 feet and a long chord of S88°03'43"W, 181.55 feet; thence

N72°17'31"W along the northerly sideline of Coos Street a distance of 635.75 feet to a point; thence

Northerly, along the arc of a curve to the right having a length of 37.96 feet to a point; said curve having a radius of 20.00 feet and a long chord of N17°55'12"W, 32.51 feet; thence

N36°27'07"E along the easterly sideline of Community Street and the westerly sideline of the former B&M Railroad a distance of 193.50 feet to an iron pin; thence

N30°58'35"W a distance of 224.19 feet to an iron pin; thence

N80°26'37"W along the northerly sideline of Community Street a distance of 150.30 feet to an iron pin; thence

Along White Mountain Energy property the following three courses:

1. N12°18'02"E a distance of 128.05 feet to a point.
2. N77° 41'58"W a distance of 229.83 feet to an iron pin.
3. N49° 28'23"W a distance of 85.21 feet, to the point of beginning.

PARCEL TWO

A certain tract or parcel of land with buildings and improvements thereon located on the east side of the Androscoggin River, on the west side of Hutchins Street and on the north sides of Coos Street and Community Street in Berlin, Coos County, State of New Hampshire, being shown as **Tax Map 129, Parcel 54.01** on a plan of land entitled "Survey Plat Lands of North American Dismantling Corp. Tax Map 129, Parcel 54.001 and White Mountain Energy, LLC Tax Map 129, Parcel 54.01 Berlin, New Hampshire", dated December 12, 2008 as prepared by York Land Services, LLC, Plan No, 08-045A and recorded as Plan No. 3217, (the "Plan"), being bounded and described as follows:

Commencing at the southwesterly corner of the lot on the northerly side of Community Street on the easterly side of the Androscoggin River; thence

N 40°33'28"E along land of Public Service Company of New Hampshire for 119.82 feet to an iron pin, said pin also marks the beginning point of Parcel One described above; thence

Along North American Dismantling Corporation property the following three courses:

1. S 49°28'23"E a distance of 85.21 feet, to a point.
2. S 77°41'58"E a distance of 229.83 feet to an iron pin.
3. S 12°18'02"W a distance of 128.05 feet to an iron pin on the northerly sideline of Community Street; thence

Westerly along the northerly sideline of Community Street the following nine courses:

1. N 80°26'37"W a distance of 45.46 feet to a point
2. N 40°52'51"E a distance of 17.33 feet to a point
3. N 80°50'40"W a distance of 53.50 feet to a point
4. N 80°31'58"W a distance of 69.28 feet to a point
5. N 80°27'54"W a distance of 47.42 feet to a point
6. N 72°30'00"W a distance of 41.75 feet to a point
7. N 59°33'54"W a distance of 28.05 feet to a point
8. N 50°09'33"W a distance of 58.82 feet to a point
9. N 48°55'11"W a distance of 38.96 feet to a point of beginning.

Shown to contain 0.96 acre, more or less. See also "Site Plan, Cluster Rule/Energy Project, White Mountain Energy, LLC, Community Street, Berlin, New Hampshire" prepared by York Land Service, LLC recorded at the Coos County Registry of Deeds as Plan #1960 (the "Site Plan").

Parcels One and Two combined, contain a total of 62.0 acres, more or less, TOGETHER WITH the rights and benefits granted under an Easement Agreement for Railroad Spur Track from North American Dismantling Corp. to PJPD Holdings, LLC dated December 23, 2008 and recorded with the Coos County Registry of Deeds at Book 1265, Page 1016, and being depicted on Plan No. 3218.

TOGETHER WITH AND SUBJECT TO the rights and benefits granted under the Amendment and Restatement of Easement and Shared Use Agreement for Water Distribution System and Filtration Plant between North American Dismantling Corp., PJPD Holdings, LLC, and Fraser N.H., LLC dated December 23, 2008 and recorded with the Coos County Registry of Deeds at Book 1265, Page 981.

Meaning and intending to describe a portion of the premises described in the deed of Fraser N.H., LLC to North American Dismantling Corp., dated October 3, 2006 and recorded with the Coos County Registry of Deeds at Book 1190, Page 932; and the same premises conveyed to White Mountain Energy, LLC by deed of Fraser N.H., LLC dated December 19, 2003 and recorded with the Coos County Registry of Deeds at Book 1064, Page 249.

Reference is also made to the plan of land entitled, "Minor Lot Line Adjustment between properties of North American Dismantling Corp., Tax Map 129, Parcel 54.001 and White Mountain Energy, LLC, Tax Map 129, Parcel 54.01, Berlin, New Hampshire", dated October 1, 2007, revised March 12, 2008, and recorded at Coos County Registry of Deeds as Plan No. 3101.

Further meaning and intended to describe the same premises conveyed by North American Dismantling Corporation and White Mountain Energy, LLC to PJPD Holdings, LLC by Quitclaim Deed dated December 23, 2008 and recorded with the Coos County Registry of Deeds at Book 1265, Page 1025, subject to the reservations contained in said Deed.

Exhibit "B"
Form of Memorandum of Purchase Option

MEMORANDUM OF PURCHASE OPTION

This MEMORANDUM OF PURCHASE OPTION (this "Memorandum") is made as of the ___ day of _____, 20__, by and between **Berlin Station, LLC**, a Delaware limited liability company ("Site Owner") having an office and mailing address at _____,_____ and **Burgess Biopower, LLC**, a Delaware limited liability company ("Burgess") having an office and mailing address at _____, _____, and **Public Service Company of New Hampshire**, a New Hampshire corporation ("Option Holder") having a mailing address at _____,_____.

WITNESSETH:

WHEREAS, Site Owner is the owner of certain real property located in the City of Berlin, Coos County, New Hampshire located on Cumberland Street and more particularly described in Exhibit A attached hereto and made a part hereof (the "Option Property"); and

WHEREAS, Site Owner is the owner of a biomass powered electrical generation facility including buildings, improvements, fixtures, and other property interests located on or at the Option Property (the "Option Facilities") and Burgess is the lessee of the Facility Site and the Facility; and

WHEREAS, Site Owner and Burgess have granted to Option Holder the exclusive right and option (the "Option") to purchase the Option Property and the Option Facilities and associated personal and intangible property on the terms and conditions stated in a Purchase Option Agreement dated _____, 20__, (the "Option Agreement"); and

NOW, THEREFORE, the parties hereto agree that subject to the complete terms and conditions of the Option Agreement, they wish to give notice as a matter of public record of the following matters regarding the Option Agreement:

1. **Option Property.** The Option Property is a parcel of approximately 62 acres in the City of Berlin, Coos County, New Hampshire as more particularly described in Exhibit A hereto, which parcel constitutes Parcel No. _____on the City of Berlin property tax records. The Option Facilities include the electric generation plant located on the Option Property, together with all associated real, personal and intangible property.

2. **Option Term.** The Option Agreement became effective on _____, 20__. The Option may be exercised at any time beginning on _____, and ending on _____, 20__ ("Option Exercise Period"). If the Option is not exercised by PSNH or its assignee within the Option Exercise Period, the Option expires.

3. **Complete Terms of Option.** This Memorandum is not intended to set forth all of the terms of the Option Agreement, and reference is hereby made thereto for all of the terms. In the event of conflict between the terms of the Option Agreement and this Memorandum, the terms of the Option Agreement shall control. All provisions of the Option Agreement are incorporated herein by this reference as though fully set forth.

4. **Execution in Counterparts.** This Memorandum may be executed in any number of counterparts, all of which together shall constitute a single instrument, and it shall not be necessary that any counterpart be signed by all the parties hereto.

IN WITNESS WHEREOF, the parties have caused this Memorandum to be executed by their respective duly authorized officers or representatives as of the date above first written.

Berlin Station, LLC
a Delaware limited liability company

By: _____
Name: _____
Title: Its _____

Burgess Biopower, LLC
a Delaware limited liability company

By: _____
Name: _____
Title: Its _____

Public Service Company of New Hampshire
a New Hampshire corporation

By: _____
Name: _____
Title: Its _____

[ACKNOWLEDGEMENTS]

EXHIBIT A
"Option Property"

PARCEL ONE

A certain tract or parcel of land with buildings and improvements thereon located on the east side of the Androscoggin River, on the west side of Hutchins Street and on the north sides of Coos Street and Community Street in Berlin, Coos County, State of New Hampshire, being shown as **Tax Map 129, Parcel 54.001** on a plan of land entitled "Survey Plat Lands of North American Dismantling Corp. Tax Map 129, Parcel 54.001 and White Mountain Energy, LLC Tax Map 129, Parcel 54.01 Berlin, New Hampshire", dated December 12, 2008 as prepared by York Land Services, LLC, Plan No, 08-045A and recorded as Plan No. 3217, (the "Plan"), being bounded and described as follows:

Beginning at an iron pin marking the most northerly corner of land conveyed to White Mountain Energy, LLC as described in Coos County Registry of Deeds, Volume 1064, Page 249, being near the easterly bank of the Androscoggin River, 119.82 feet northerly of Community Street; thence

Along Public Service Company of New Hampshire the following two courses:

3. N40°33'28"E a distance of 232.47 feet to an iron pin.
4. N35°25'38"W a distance of 32 feet to a point on the east shore of the Androscoggin River; thence

Easterly along the east shore of the Androscoggin River a distance of approximately 2380 feet to a point; thence

S 60°57'44"E along other land of North American Dismantling Corporation a distance of 50 feet to an iron pin; thence continuing

S 60°57'44"E along other land of North American Dismantling Corporation a distance of 1071.24 feet to a point on the westerly sideline of Hutchins Street witnessed by an iron pin with YLS cap, found flush lying S60°57'44"E 0.11 feet distant; thence

Southerly along the westerly sideline of Hutchins Street the following nine courses:

10. Arc of a curve to the right having a length of 37.64 feet to a point; said curve having a radius of 460.00 feet and a long chord of S45°00'49"W, 37.63 feet.

11. S47°21'29"W a distance of 357.82 feet to a point.

12. Arc of a curve to the left having a length of 306.71 feet to a point; said curve having a radius of 2030.11 feet and a long chord of S43°01'47"W, 306.42 feet.

13. S38°42'06"W a distance of 164.40 feet to a point.

14. Arc of a curve to the right having a length of 402.00 feet to a point; said curve having a radius of 594.99 feet and a long chord of S58°03'24"W, 394.40 feet.

15. S77°24'43"W a distance of 374.08 feet to a point.

16. Arc of a curve to the left having a length of 318.73 feet to a point; said curve having a radius of 2030.00 feet and a long chord of S72°54'51"W, 318.40 feet.

17. S68°24'58"W, a distance of 204.80 feet to a point.

18. Arc of a curve to the right having a length of 185.16 feet to a point; said curve having a radius of 270.00 feet and a long chord of S88°03'43"W, 181.55 feet; thence

N72°17'31"W along the northerly sideline of Coos Street a distance of 635.75 feet to a point; thence

Northerly, along the arc of a curve to the right having a length of 37.96 feet to a point; said curve having a radius of 20.00 feet and a long chord of N17°55'12"W, 32.51 feet; thence

N36°27'07"E along the easterly sideline of Community Street and the westerly sideline of the former B&M Railroad a distance of 193.50 feet to an iron pin; thence

N30°58'35"W a distance of 224.19 feet to an iron pin; thence

N80°26'37"W along the northerly sideline of Community Street a distance of 150.30 feet to an iron pin; thence

Along White Mountain Energy property the following three courses:

4. N12°18'02"E a distance of 128.05 feet to a point.
5. N77° 41'58"W a distance of 229.83 feet to an iron pin.
6. N49° 28'23"W a distance of 85.21 feet, to the point of beginning.

PARCEL TWO

A certain tract or parcel of land with buildings and improvements thereon located on the east side of the Androscoggin River, on the west side of Hutchins Street and on the north sides of Coos Street and Community Street in Berlin, Coos County, State of New Hampshire, being shown as **Tax Map 129, Parcel 54.01** on a plan of land entitled "Survey Plat Lands of North American Dismantling Corp. Tax Map 129, Parcel 54.001 and White Mountain Energy, LLC Tax Map 129, Parcel 54.01 Berlin, New Hampshire", dated December 12, 2008 as prepared by York Land Services, LLC, Plan No, 08-045A and recorded as Plan No. 3217, (the "Plan"), being bounded and described as follows:

Commencing at the southwesterly corner of the lot on the northerly side of Community Street on the easterly side of the Androscoggin River; thence

N 40°33'28"E along land of Public Service Company of New Hampshire for 119.82 feet to an iron pin, said pin also marks the beginning point of Parcel One described above; thence

Along North American Dismantling Corporation property the following three courses:

4. S 49°28'23"E a distance of 85.21 feet, to a point.
5. S 77°41'58"E a distance of 229.83 feet to an iron pin.
6. S 12°18'02"W a distance of 128.05 feet to an iron pin on the northerly sideline of Community Street; thence

Westerly along the northerly sideline of Community Street the following nine courses:

10. N 80°26'37"W a distance of 45.46 feet to a point
11. N 40°52'51"E a distance of 17.33 feet to a point
12. N 80°50'40"W a distance of 53.50 feet to a point
13. N 80°31'58"W a distance of 69.28 feet to a point
14. N 80°27'54"W a distance of 47.42 feet to a point
15. N 72°30'00"W a distance of 41.75 feet to a point
16. N 59°33'54"W a distance of 28.05 feet to a point
17. N 50°09'33"W a distance of 58.82 feet to a point
18. N 48°55'11"W a distance of 38.96 feet to a point of beginning.

Shown to contain 0.96 acre, more or less. See also "Site Plan, Cluster Rule/Energy Project, White Mountain Energy, LLC, Community Street, Berlin, New Hampshire" prepared by York Land Service, LLC recorded at the Coos County Registry of Deeds as Plan #1960 (the "Site Plan").

Parcels One and Two combined, contain a total of 62.0 acres, more or less, TOGETHER WITH the rights and benefits granted under an Easement Agreement for Railroad Spur Track from North American Dismantling Corp. to PJPD Holdings, LLC dated December 23, 2008 and recorded with the Coos County Registry of Deeds at Book 1265, Page 1016, and being depicted on Plan No. 3218.

TOGETHER WITH AND SUBJECT TO the rights and benefits granted under the Amendment and Restatement of Easement and Shared Use Agreement for Water Distribution System and Filtration Plant between North American Dismantling Corp., PJPD Holdings, LLC, and Fraser N.H., LLC dated December 23, 2008 and recorded with the Coos County Registry of Deeds at Book 1265, Page 981.

Meaning and intending to describe a portion of the premises described in the deed of Fraser N.H., LLC to North American Dismantling Corp., dated October 3, 2006 and recorded with the Coos County Registry of Deeds at Book 1190, Page 932; and the same premises conveyed to White Mountain Energy, LLC by deed of Fraser N.H., LLC dated December 19, 2003 and recorded with the Coos County Registry of Deeds at Book 1064, Page 249.

Reference is also made to the plan of land entitled, "Minor Lot Line Adjustment between properties of North American Dismantling Corp., Tax Map 129, Parcel 54.001 and White Mountain Energy, LLC, Tax Map 129, Parcel 54.01, Berlin, New Hampshire", dated October 1, 2007, revised March 12, 2008, and recorded at Coos County Registry of Deeds as Plan No. 3101.

Further meaning and intended to describe the same premises conveyed by North American Dismantling Corporation and White Mountain Energy, LLC to PJPD Holdings, LLC by Quitclaim Deed dated December 23, 2008 and recorded with the Coos County Registry of Deeds at Book 1265, Page 1025, subject to the reservations contained in said Deed.

EXHIBIT 3

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DE 10-195

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

Consideration of Effects of SB 577 on Order No. 25,213

Order Amending Order No. 25,213

ORDER NO. 26,198

December 5, 2018

APPEARANCES: Robert Bersak, Esq., on behalf of Public Service Company of New Hampshire d/b/a Eversource Energy; Foley Hoag LLP by Carol J. Holahan, Esq., on behalf of Berlin Station, LLC; Donahue, Tucker & Ciandella, PLLC, by Christopher L. Boldt, Esq., on behalf of the City of Berlin; Consumer Advocate D. Maurice Kreis, Esq., on behalf of residential ratepayers; and Suzanne G. Amidon, Esq., on behalf of Commission Staff.

As directed by a state law enacted earlier this year, the Commission hereby amends page 97 of Order No. 25,213 (April 19, 2011), which granted conditional approval to a purchase power agreement between Eversource and Berlin Station, LLC. The amended page is attached to this order.

I. PROCEDURAL HISTORY

On June 28, 2018, Governor Sununu signed into law Senate Bill 577 titled, "AN ACT requiring the public utilities commission to revise its order affecting the Burgess BioPower plant in Berlin, prohibiting the import of certain liquid fuels, and relative to the production of useful thermal energy." Laws of 2018, ch. 340 (SB 577). In Section 1 of SB 577, the New Hampshire 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." Section 2 directs the Commission to "amend its Order No. 25,213 (Docket No. 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."

The Commission issued an order of notice on August 2, 2018, scheduling a prehearing conference on September 5, 2018. At the prehearing conference, Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource); the City of Berlin; Berlin Station, LLC (Berlin Station); and the Office of the Consumer Advocate (OCA) appeared and discussed the issues raised by SB 577.

The OCA filed a Motion for Determinations as a Matter of Law on September 18, 2018. Berlin Station filed a timely objection, and Eversource and the City of Berlin filed memoranda stating their positions.

II. POSITIONS

A. Eversource and Berlin Station Request to Implement SB 577

Eversource stated that, to carry out the legislative intent of SB 577, Eversource and Berlin Station must bilaterally negotiate amendments to the existing power purchase agreement (PPA). Eversource said it is willing to enter into such negotiations subject to two conditions: (1) receipt of an amended Order No. 25,213 that provides the legal basis for such discussions; and (2) assurance from the Commission that Eversource will in fact be entitled to recover any additional costs resulting from an extension of the contract.

Berlin Station and the City of Berlin agreed that the Commission should issue the order directed by the legislature. Berlin Station agreed with Eversource that any additional costs should be recovered from ratepayers. The City took no position on cost recovery.

B. OCA's Motion

After the prehearing conference, the OCA filed a motion asking the Commission to resolve a number of legal issues associated with the passage of SB 577. The parties had discussed those issues and the filing of such a motion at the prehearing conference and technical session.

The OCA did not dispute that the purpose of SB 577 was to lift, for a three-year period, certain limitations on the right of the plant owner to receive payment from Eversource for costs in excess of the prevailing prices of energy, capacity, and renewable energy certificates (RECs) in applicable markets. The OCA insisted, however, that the Commission must address two issues: (1) the extent to which the over-market costs are recoverable from Eversource customers on a non-bypassable basis, and (2) whether the Commission should obtain the "cost and profitability records" which SB 577 explicitly authorizes the Commission to receive in connection with the current proceeding. OCA Motion at 2; *see* Ch. 340:2, II.

The OCA noted that while SB 577 requires Eversource to continue to pay over-market prices beyond the terms of the PPA approved by the Commission in Order No. 25,213, the law does not say how this should be accomplished. Up until divestiture, Eversource recovered the over-market costs from customers in Eversource's energy service rate. In Order No. 25,213, the Commission characterized the cumulative reduction factor (CRF) as providing Eversource's energy service customers an opportunity to recapture the over-market payments, if any, made during the term of the PPA in the event Eversource exercised its option under the PPA to purchase Berlin Station at the end of the term of the PPA. The Commission concluded that without the CRF, the costs of the PPA to Eversource's energy service customers outweighed the environmental and economic benefits of the PPA. *See* Motion at 3. The CRF was capped at

$100 million in over-market costs, and once that amount was reached, any over-market payments made in a subsequent year would be returned to energy service customers in the immediately following year. *See id.* at 4.

The OCA pointed out that the 2015 Restructuring and Rate Stabilization Agreement (2015 Restructuring Agreement)[1] approved by the Commission changed cost-recovery related to PPAs previously approved by the Commission between suppliers and Eversource, including the Berlin Station PPA. The 2015 Restructuring Agreement provided that Eversource's commitments to purchase power from Berlin Station and the Lempster Wind Farm would continue, provided that the difference between the contract price and the market revenues associated with the PPAs' energy, capacity, and RECs would be recovered through the stranded cost recovery charge (SCRC) that was created in connection with divestiture of generation sources. *See id.* at 5.

The OCA said that at the time it signed the 2015 Restructuring Agreement, the maximum extent to which residential customers could be subject to over-market costs associated with purchases of energy, capacity, and RECs from Berlin Station was a specific known quantity, as a result of the Commission-imposed cap on the CRF. The OCA argued that, to the extent SB 577 removes the limit on cost recovery, the law is a material change to the terms of the 2015 Restructuring Agreement. *Id.* at 6.

The OCA noted that in the context of civil proceedings, the New Hampshire Supreme Court has held that settlement agreements are contractual in nature, and governed by contract law. *Id.* (citations omitted). The OCA claimed that Eversource ratepayers are entitled to the benefit of the bargain represented by the 2015 Restructuring Agreement; and that the imposition

[1] The 2015 Restructuring Agreement is a multi-party settlement of issues related to Eversource's divestiture of its generation assets in Docket No. DE 14-238 and the resolution of cost recovery of the gas flue desulphurization unit installed at Merrimack Station in Docket No. DE 11-250.

of any additional costs resulting from SB 577 impairs the contractual rights of ratepayers, and is a violation of the Contract Clause of the United States Constitution and the retrospective laws provision of the New Hampshire Constitution. *Id.* at 6-7; *see* U.S. CONST., art. I, § 10, cl. 1; N.H. CONST., pt. I, art. 23.

Having concluded that the terms of the 2015 Restructuring Agreement are contractual in nature for purposes of constitutional analysis, the OCA noted that SB 577 is silent as to whether Eversource ratepayers should be subject to additional stranded costs beyond those expressly agreed to in the 2015 Restructuring Agreement. While the fiscal note to the Senate-passed version of SB 577 assumed that Eversource customers would pay the additional costs imposed by the bill, the Senate-passed version of the bill directed the Commission to open a proceeding and consider if it is in the public interest to amend Order No. 25,213. The final version of SB 577 was different. As explained above, the final version only directs the Commission to amend Order No. 25,213 in a specific manner, without separately considering the public interest. *See* Motion at 8-9.

Assuming that the bill has a retroactive effect on the 2015 Restructuring Agreement by adding an unknown quantity of additional costs to be borne by Eversource ratepayers, the OCA concluded that SB 577 impairs the bargain struck by the OCA in signing the 2015 Restructuring Agreement, and is arguably unconstitutional. *See* Motion. at 9-11. In making this argument, the OCA recognized that if the impairment to the contract had a "significant and legitimate public purpose," the change could clear the constitutional threshold. *See id.* at 10. With respect to SB 577, according to the OCA, no such public purpose exists, because the excess money required by the law inures to the benefit of Berlin Station's owners and the surrounding community at the expense of ratepayers. *Id.*

The OCA argued that the Commission should take one of three courses of action. First, the Commission could conclude that Eversource, not its ratepayers, should be financially responsible for the costs of suspending the effect of the CRF approved in Order 25,213. Second, the Commission could declare that SB 577 is unconstitutional under the federal and state constitutions. Third, if the Commission chose not to undertake either of those options, it should transfer the question of the constitutionality of SB 577 to the New Hampshire Supreme Court. Motion at 11.

Pointing to specific language in paragraph II of section 2 of SB 577, the OCA also argued that the Commission should obtain the cost and profitability records of Berlin Station. According to the OCA, SB 577 authorizes any party to the proceeding referenced in the paragraph to tender such request. The OCA has requested the records and has noted that, pursuant to RSA 363:28, VI, the OCA is automatically entitled to a copy of confidential information filed with the Commission in an adjudicative proceeding in which the OCA is a participating party. The OCA said that removing the limit of the CRF triggers a need for the counterparties to renegotiate the PPA and submit the results to the Commission for approval. That approval, according to the OCA, will require a determination that the amended agreement is in the public interest, as well as findings related to efficiency and cost effectiveness pursuant to RSA 362-F:9. The OCA said that Berlin Station's financial records will assist in making such findings. Motion at 12-13.

1. Eversource

According to Eversource, the OCA Motion impacts recovery of the additional costs imposed by SB 577. Although the expectation of the legislature appears to be that the additional costs will be recovered through Eversource's existing stranded cost adjustment charge as

contained in the 2015 Restructuring Agreement, Eversource asserted that the Commission has authority to create a new, non-bypassable charge if inclusion in the present SCRC is problematic. Eversource took no position on the OCA's demand for access to the books and records of Berlin Station.

2. Berlin Station

Berlin Station first argued that SB 577 does not violate the Contract Clause of the federal or state constitution. According to Berlin Station, although the Contract Clause purports to bar state laws that substantially impair contractual rights, such laws will be upheld if they serve a significant and legitimate public purpose and are necessary and reasonable in the judgment of the legislature. Objection at 2 (citing *Deere & Co. v. State*, 168 N.H. 460, 472 (2015)). Berlin Station claimed that, in passing SB 577, the legislature recognized the significant and legitimate public purpose of the continued operation of the Burgess BioPower plant in Berlin. Objection at 2-3.

Berlin Station also argued that SB 577 has no retroactive effect on the PPA or on the 2015 Restructuring Agreement and is plainly prospective. Objection at 4. Berlin Station noted that SB 577 directs the Commission to reopen the proceeding, and argued that the legislature's policy choice in enacting SB 577 is unrelated to the 2015 Restructuring Agreement. According to Berlin Station, the overriding argument in support of the constitutionality of SB 577 is the public interest finding of the legislature in favor of the supporting energy infrastructure and the goals of fuel diversity, capacity, and sustainability. Objection at 4-5. Berlin Station refuted the OCA's claim that the benefits from SB 577 were unconstitutionally "targeted," saying that claim had no legal support. Berlin Station also argued that certification to the New Hampshire Supreme Court is unnecessary and unwarranted. Objection at 8-9.

Berlin Station said that while cost recovery is not discussed in the legislation, it was referenced in the fiscal note worksheet prepared by the Commission for the Legislative Budget Assistant. The fiscal note resulting from the worksheet stated that suspension of the cap on the CRF would increase costs to customers. Berlin Station said that it is irrelevant whether the costs are recovered through Eversource's stranded cost recovery charge, or some other non-bypassable charge. According to Berlin Station, the legislature intended for ratepayers to bear the cost of suspending the CRF cap, and left it to the Commission to establish an appropriate mechanism.

Finally, Berlin Station claimed that its confidential cost and profitability records are not relevant to this proceeding, and that the Commission should not require their production. According to Berlin Station, the legislature authorized only the Commission, at its discretion, to request such records; and the records will shed no light on the action that the legislation requires the Commission to take. Furthermore, the records are irrelevant because, as Berlin Station views it, the law requires Berlin Station and Eversource to negotiate a change to the PPA, and does not require consideration of the profitability of the facility.

3. City of Berlin

The City agreed with and joined in the arguments and authorities cited by Berlin Station. The City, however, took no position on whether the production of financial records by Berlin Station would be relevant to the issues currently before the Commission.

III. COMMISSION ANALYSIS

We hereby issue the change to Order No. 25,213 mandated by SB 577 and contained in the ordering clause below. The amended page 97 is attached to this order. While we agree with the OCA that there are potential constitutional issues raised by SB 577, we are not in a position to resolve them at this time. We also find that we do not have a sufficient record upon which to

certify a question to the New Hampshire Supreme Court. In this matter, it will be better for the parties and for the Court to have the full context, including any revised agreement from the parties, if the Court is asked to review this matter.

Eversource periodically informs the Commission of the balance in the CRF account. The balance has not yet reached $100 million, and therefore the over-market costs associated with the PPA between Eversource and Berlin Station have not yet reached the contractual cap. We need not consider any cost recovery mechanism for over-market costs in excess of $100 million unless and until we are presented with a PPA that will produce such costs.

Should Eversource and Berlin Station negotiate a revised PPA in response to the change contained in this order, they should file that revised PPA in this docket for our review and consideration. The filing should include testimony or a technical statement that identifies all changes to the PPA.

We appreciate the OCA's desire to access Berlin Station's books and records to determine whether an amended agreement is in the public interest. We also appreciate Berlin Station's claim that its confidential cost and profitability records may not be relevant given the legislature's public interest finding. We will reserve a decision on the production of those records until we are asked to review a revised PPA.

Based upon the foregoing, it is hereby

ORDERED, that Order No. 25,213 is amended by adding in the second paragraph on page 97: "*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.*"

By order of the Public Utilities Commission of New Hampshire this fifth day of December, 2018.

Martin P. Honigberg
Chairman

Kathryn M. Bailey
Commissioner

Michael S. Giaimo
Commissioner

Attested by:

Debra A. Howland
Executive Director

6. Cumulative Reduction Factor

As discussed above, the CRF is a step in the right direction in terms of mitigating risk to customers and seeking to avoid the situation that occurred with rate orders approved by the Commission in the 1980s, which resulted in PSNH customers paying rates over two decades that were more than $1 billion over market prices, but the protection is too limited and too remote as proposed. In addition to the conditions relative to energy, capacity and REC prices, and limitations on the quantity of energy and RECs that PSNH is required to purchase, we find it necessary to impose an additional condition, one that reasonably assures that PSNH's customers will receive, through the CRF under Article 6.1.3 of the PPA, the value of the facility anticipated through PSNH's purchase option under Article 7 of the PPA.

As discussed during the hearings, the level of CRF at the end of year 20 could be greater than the fair market value of the facility at that time, in which case PSNH customers would not be fully "compensated" under PSNH's approach for the over-market payments over the term of the agreement. To better protect the interests of customers, we will cap the level of the CRF on a cumulative annual basis at $100 million, a level that reasonably compares to testimony in the record as to the potential future value of the facility.[47] *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.* To the extent that the accumulated account exceeds $100 million in any year, the overage will be credited against the energy price paid in the following year. This mechanism has the salutary impact of reducing risk to customers over time in the event PPA prices are well above market prices by effectively matching the level of the CRF to a prospective value of the facility. Further, through this mechanism customers would see the benefit of mid-course or late-course downward adjustments in the energy price if it turns out that the PPA is significantly over-market.

[47] At hearing a range of future values of the Facility was discussed, from the possibility of no value, *see* 1/24/11 AM Tr. at 82-83, to $120-$135 million depending on the capacity rating assumed, *see* 2/1/11 Tr. at 21-22.

Bill Text: NH SB577 | 2018 | Regular Session | Amended
New Hampshire Senate Bill 577 ***(Prior Session Legislation)***

Bill Title: Requiring the public utilities commission to revise its order affecting the Burgess BioPower plant in Berlin, prohibiting the import of certain liquid fuels, and relative to the production of useful thermal energy.

Spectrum: Slight Partisan Bill (Republican 5-2)

Status: *(Passed)* 2018-06-29 - III. Remainder Effective 07/01/2018 [SB577 Detail]

Download: New_Hampshire-2018-SB577-Amended.html

SB 577 - AS AMENDED BY THE HOUSE

03/08/2018 0721s
03/08/2018 0884s
3May2018... 1677h

2018 SESSION

18-2889
10/06

SENATE BILL ***577***

AN ACT requiring the public utilities commission to revise its order affecting the Burgess BioPower plant in Berlin, prohibiting the import of certain liquid fuels, and relative to the production of useful thermal energy.

SPONSORS: Sen. Bradley, Dist 3; Sen. Woodburn, Dist 1; Sen. Giuda, Dist 2; Sen. Avard, Dist 12; Rep. Theberge, Coos 3; Rep. Y. Thomas, Coos 3; Rep. Chandler, Carr. 1

COMMITTEE: Energy and Natural Resources

AMENDED ANALYSIS

This bill:

I. Requires the public utilities commission to reopen a proceeding to revise to its order affecting the Burgess BioPower plant in Berlin.

II. Prohibits the import of certain liquid fuels and prohibits the sale of such fuels in 2019.

III. Changes the inclusion in electric renewable energy class I for methane gas.

- -

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.
03/08/2018 0721s
03/08/2018 0884s
3May2018... 1677h 18-2889
10/06

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eighteen

AN ACT requiring the public utilities commission to revise its order affecting the Burgess BioPower plant in Berlin, prohibiting the import of certain liquid fuels, and relative to the production of useful thermal energy.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Findings. The general court finds 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.

2 Public Utilities Commission; Proceedings; Authority to Amend Order. Notwithstanding any other provision of the law to the contrary, the public utilities commission shall reopen its Docket DE 10-195 and forthwith revise its Order No. 25,213 in the following manner:

I. Suspension of Operation of Cap. The public utilities commission shall 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.

II. During the proceedings the Burgess BioPower plant shall, upon request, make their cost and profitability records available to the public utilities commission, which records shall be exempt from public disclosure under RSA 91-A:5, IV.

3 Sulphur Limits; Import Prohibited. Amend RSA 125-C:10-d to read as follows:

125-C:10-d Sulfur Limits of Certain Liquid Fuels.

I. ***No person shall import into the state any of the following liquid fuels:***

(a) No. 2 oil, also referred to as distillate oil, with a sulfur content greater than 0.0015 percent by weight;

(b) No. 4 oil with a sulfur content greater than 0.25 percent by weight; or

(c) Nos. 5 or 6 oil, also referred to as residual oil, with a sulfur content greater than 0.5 percent by weight.

II. Beginning on February 1, 2019 and continuing thereafter, no person shall sell, offer for sale, supply, distribute for sale or use, except for fuel remaining in storage for a device not requiring a permit pursuant to RSA 125-C:11, any of the following liquid fuels:

(a) No. 2 oil, also referred to as distillate oil, with a sulfur content greater than 0.0015 percent by weight;

(b) No. 4 oil with a sulfur content greater than 0.25 percent by weight; or

(c) Nos. 5 or 6 oil, also referred to as residual oil, with a sulfur content greater than 0.5 percent by weight.

~~II~~ *III.* The commissioner may temporarily allow the use of non-conforming fuels with respect to paragraph ~~I~~ *II* if there is a demonstrated need to do so based on an acute shortage of supply.

4 Electric Renewable Energy Classes; Useful Thermal Energy. Amend RSA 362-F:4, I(e) to read as follows:

(e) Methane gas ***if the methane gas energy output is in the form of useful thermal energy provided that the unit began operation after January 1, 2013.***

5 Effective Date.

I. Section 3 of this act shall take effect 12:01 a.m. July 1, 2018.

II. Section 4 of this act shall take effect 60 days after its passage.

III. The remainder of this act shall take effect July 1, 2018.

LBAO
18-2889
Amended 4/6/18

SB 577- FISCAL NOTE

AS AMENDED BY THE SENATE (AMENDMENTS #2018-0721s and #2018-0884s)

AN ACT requiring the public utilities commission to consider its order affecting the Burgess BioPower plant in Berlin, prohibiting the import of certain liquid fuels, and relative to the production of useful thermal energy.

FISCAL IMPACT: [X] State [X] County [X] Local [ ] None

	Estimated Increase / (Decrease)			
STATE:	**FY 2019**	**FY 2020**	**FY 2021**	**FY 2022**
Appropriation	$0	$0	$0	$0
Revenue	$0	$0	$0	$0
Expenditures	Indeterminable	Indeterminable	Indeterminable	Indeterminable
Funding Source:	[X] General [ ] Education [X] Highway [X] Other - Various Governmental Funds			

COUNTY:

Revenue	$0	$0	$0	$0
Expenditures	Indeterminable	Indeterminable	Indeterminable	Indeterminable

LOCAL:

Revenue	$0	$0	$0	$0
Expenditures	Indeterminable	Indeterminable	Indeterminable	Indeterminable

METHODOLOGY:

The Public Utilities Commission (PUC) indicates sections 1 and 2 of the bill concerning the Burgess BioPower plant (Burgess) instruct the PUC to consider whether to raise the level of the cumulative reduction factor in the contract between Eversource and Burgess. If the cumulative reduction factor were higher it would allow Burgess to continue to charge Eversource for its output which would increase Eversource's costs related to the contract. Because the costs of the Burgess contract are paid by Eversource customers, if such an increase occurred it would increase costs to customers above the $100 million cap on the energy component of the current contract. To the extent that the state, county and local governments are Eversource ratepayers, increasing the cumulative reduction fund would increase their electricity bills as all over-market costs associated with the contract are recovered through the stranded cost reduction charge. Because it is not possible to know the outcome of a future PUC docket, such increases are speculative and therefore the impact on costs is indeterminable. If the PUC were to raise the cumulative reduction factor, it could potentially allow the Burgess plant to operate longer than under the current contract. Increased operation would likely increase plant value and potentially increase local tax revenues. Because such an increase in tax revenues is speculative, the effect on local revenues is indeterminable.

The PUC states section 4 of the bill clarifies that certain methane gas energy output may qualify as useful thermal energy and be eligible for renewable energy certificates under RSA 362-F. Eligible facilities using methane gas to produce useful thermal energy would create Class I Thermal renewable energy certificates (RECs), thereby increasing the supply of Class I Thermal renewable energy certificates. That increase in Class I Thermal REC supply would help New Hampshire meet its renewable portfolio standard goals and could put downward pressure on Class I Thermal REC prices. REC prices are included in electricity rates, and therefore impact the costs to state, county and local governmental units, to the extent they are electricity consumers. The amount of these cost impacts are indeterminable.

The Department of Environmental Services indicates section 3 of the bill prohibits the import of certain liquid fuels and prohibits the sale of such fuels in 2019. It is the Department's understanding, based on information from fuel suppliers, there would be no significant price differential once low sulfur fuel was implemented throughout the northeast region, which will happen in July 2018.

AGENCIES CONTACTED:

Public Utilities Commission and Department of Environmental Services

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DE 19-142

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

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

Amended Order Approving an Amendement to the Power Purchase Agreement

ORDER NO. 26,333

February 18, 2020

APPEARANCES: Jessica Chiavara, Esq., on behalf of Public Service Company of New Hampshire d/b/a Eversource Energy; Carol Holahan, Esq., on behalf of Berlin Station; Christopher Boldt, Esq., on behalf of the City of Berlin; the Office of the Consumer Advocate by D. Maurice Kreis, Esq., on behalf of residential ratepayers; and F. Anne Ross, Esq., and Brian D. Buckley, Esq., on behalf of Commission Staff.

In this order, we approve an amended power purchase agreement between Eversource and Berlin Station and a settlement agreement, which implement the directives established by the Legislature in 2018 N.H. Laws, chapter 340. The approvals allow Eversource to recover from ratepayers the over-market costs of energy purchased from Berlin Station for three years. This order amends Order No. 26,331 issued on January 31, 2020, by deleting footnote number eight.

I. PROCEDURAL HISTORY

On December 5, 2018, the Commission issued Order No. 26,198 (Order) amending its earlier Order No. 25,213 (April 18, 2011) (Original Order). The Original Order approved with conditions a power purchase agreement (PPA) between Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource or the Company) and Laidlaw Berlin

BioPower, LLC, now Berlin Station, LLC (Berlin Station).[1] The PPA requires Eversource to purchase electric power, including energy, capacity, and the associated renewable energy certificates, at agreed prices for a 20-year term.

If the energy prices in the PPA are higher than market prices, the calculation becomes a cumulative reduction on the purchase price of the facility, known as the cumulative reduction factor (CRF). PPA at 11. Pursuant to the Original Order, a $100 million cap was imposed on the CRF such that, in the event the accumulated CRF exceeds $100 million at the end of any operating year, the overage paid above the cap would be credited against contract payments made to Berlin Station for electric power in the following year and customers' resulting energy service rates would be reduced. Order No. 25,213 at 97.

On June 28, 2018, Governor Sununu signed into law Senate Bill 577, 2018 N.H. Laws, ch. 340 (SB 577). In SB 577, the New Hampshire Legislature found that the "continued operation of the Burgess BioPower plant in Berlin is important to the energy infrastructure of the state … and important for the attainment of renewable energy portfolio standard goals of fuel diversity, capacity, and sustainability." *Id.* Additionally, Section 2 of SB 577 directed the Commission to amend Order No. 25,213, "to suspend the operation of the cap on the cumulative reduction factor as set forth on page 97 of its Order for a period of 3 years from the date the operation of the cap would have otherwise taken effect." 2018 N.H. Laws, ch. 340:2.

As directed by statute, the Commission amended the Original Order to suspend the operation of the cap for three years from the date on which the cumulative amount reaches $100 million. Order No. 26,198 at 9. On August 30, 2019, the Commission issued an order of

[1] Following issuance of the Original Order approving the PPA, ownership of the BioPower plant in Berlin was transferred from Laidlaw Berlin BioPower, LLC, to a newly created entity, Berlin Station, LLC. The plant is operated by Burgess BioPower.

notice opening this docket to consider "whether, and if so under what rate recovery mechanism, Eversource may recover from ratepayers the over-market costs of electric energy purchased under the PPA with Berlin Station in excess of the $100 million cap while operation of the cap is suspended." Order of Notice at 2-3. The CRF amount reached $100 million in September 2019.

On November 19, 2019, Eversource filed an amendment to the PPA (Amended PPA) with Berlin Station, together with a motion requesting that the Commission approve the Amended PPA accompanied by testimony from Frederick B. White. On November 26, the Office of Consumer Advocate (OCA) filed an opposition to the motion, and on December 5, Berlin Station filed a motion to strike portions of the OCA opposition. On December 12, the Commission issued a supplemental order of notice concerning the proposed Amended PPA. The City of Berlin petitioned to intervene on December 30.

On December 31, 2019, Eversource, Berlin Station, the OCA and Commission Staff jointly filed a settlement agreement (Settlement Agreement) requesting expedited approval of the Amended PPA so that Stranded Cost Rates could be adjusted with other reconciling adjustments effective February 1, 2020. A prehearing conference was held on January 9, 2020, and on January 14, Eversource filed responses to two record requests concerning customer impacts of the Amended PPA with the Commission. Eversource filed supplemental responses to the two record requests on January 17, and corrected supplemental responses on January 24.

A hearing was held before the Commission on January 29, 2020. The settling parties presented a panel of witnesses in support of the Settlement.[2] The Settlement Agreement and

[2] The panel of witnesses included: Robert Desrosiers and Dammon Frecker representing Berlin Station; Erica Menard and Frederick White representing Eversource; Dr. Pradip Chattopadhyay representing the OCA; and Thomas Frantz representing Commission Staff.

related docket filings, other than information for which confidential treatment is requested of or granted by the Commission, are posted at https://puc.nh.gov/Regulatory/Docketbk/2019/19-142.html.

II. SETTLEMENT AGREEMENT

The Settlement Agreement requests that the Commission approve the Amended PPA[3] and allow Eversource to recover the over-market costs of the Amended PPA through its non-bypassable stranded cost recovery charge (SCRC) on a uniform cents per kilowatt-hour (kWh) basis.[4] Pursuant to the terms of the Amended PPA, after the end of the three-year period starting on December 1, 2019, and ending on November 30, 2022, the amount by which the CRF account is in excess of $100 million (the Excess Cumulative Reduction Amount) will be credited against amounts otherwise due for energy delivered to PSNH during the subsequent operating year (December 1, 2022, through November 30, 2023) until such Excess Cumulative Reduction Amount is eliminated.

According to the Settlement Agreement, the impact on customer rates of this Amended PPA is estimated to be an increase of approximately $20 to $25 million per year during the three-year suspension period. The rate impact will vary and is dependent upon operations of Berlin Station and the market prices for energy. The Excess Cumulative Reduction Amount will

[3] While Order No. 26,198 suspended operation of the cap, the cap in the PPA remains in effect. In order to effectuate the suspension, the Amended PPA must be approved by the Commission. Further, the Amended PPA is contingent on an order from the Commission approving recovery by Eversource of over-market costs from customers through a non-bypassable rate mechanism. Amended PPA at 3.

[4] Pursuant to the 2015 Restructuring Agreement, approved in Order No. 25,920, Part 2 stranded costs recovered through the SCRC are allocated among rate classes at specified percentages. Under the Settlement Agreement, the SCRC allocation for the over-market costs above the $100 million CRF cap will be applied on an equal cents per kilowatt-hour basis.

then be credited to ratepayers during the operating year following the three-year suspension (December 1, 2022, through November 30, 2023).

The settling parties included a motion for expedited decision with the Settlement Agreement in order to allow the combination of any rate adjustment resulting from the Amended PPA with other rate adjustments established in Docket No. DE 19-108 for effect on February 1, 2020.

III. COMMISSION ANALYSIS

Even when the parties to a contested case have entered into a settlement agreement, we must "independently review the settlement to ensure that the result comports with applicable standards." Public Service Company of New Hampshire d/b/a Eversource Energy, Order No. 25,920 at 64 (July 1, 2016); *see* N.H. Admin. R., Puc 203.20(b) ("The commission shall approve a disposition of any contested case by stipulation [or] settlement … if it determines that the result is just and reasonable and serves the public interest"). The Settlement Agreement in this docket represents the settling parties' "accord to implement" the Legislature's mandate in SB 577 that the Commission "suspend the operation of the cap on the cumulative reduction factor ... for a period of 3 years from the date the operation of the cap would have otherwise taken effect." Settlement Agreement at 1; 2018 N.H. Laws, ch. 340:2. Accordingly, we review the Settlement Agreement for conformity with the directives in SB 577, and to ensure that it satisfies the requirement of RSA 374:57 that the Amended PPA is not unreasonable or against the public interest.

Through SB 577, the Legislature plainly required suspension of the cap on the CRF for three years. In light of the stated importance of "the continued operation" of Berlin Station "to the energy infrastructure of the state" and "the attainment of renewable energy portfolio standard

goals of fuel diversity, capacity, and sustainability," 2018 N.H. Laws, ch. 340:1, it is clear that the purpose of suspending the CRF cap was to avoid the potential shutdown of Berlin Station and ensure "extra time" for Berlin Station and the Legislature "to secure a more permanent solution to protect our energy infrastructure." Committee Report on SB 577, House Science, Technology, and Energy Committee, May 2, 2018. Furthermore, it is clear that the Legislature was cognizant of the fact that suspension of the CRF cap would have a direct cost to ratepayers. Both the fiscal note to SB 577 and the legislative history demonstrate an understanding that Eversource ratepayers would bear the cost of suspending the CRF cap at least during the three-year suspension period. SB 577 (2018) Fiscal Note; Public Hearing on SB 577, House Science, Technology, and Energy Committee (April 11, 2018) (testimony regarding the cost of SB 577 to ratepayers).

The costs are significant. In response to a record request by the Commission, Eversource indicated that the over-market energy costs under the PPA for the current operating year (December 1, 2019 through November 30, 2020) are forecast to be $25.688 million.[5] Projected over the three-year suspension period, Eversource estimates its customers will pay a total of $82.3 million in over-market costs (the Excess Cumulative Reduction Amount). When applied on an equal cents per kilowatt-hour basis across all rate classes, as proposed by the Settlement Agreement, those over-market costs translate to an estimated average rate increase of

[5] To align recovery with the February 1 adjustment of the stranded cost recovery charge, Eversource proposed recovery of the known and forecasted over-market costs between September 2019 and January 30, 2021, beginning February 1, 2020. During operating year December 1, 2018, through November 30, 2019, cumulative over-market payments to Berlin Station exceeded the $100 million CRF cap by $5.267 million. That additional cost combined with the forecasted over-market costs from December 1, 2019, through January 30, 2021, is estimated to be $33.576 million, which will be recovered from Eversource ratepayers between February 1, 2020, and January 31, 2021. Exhibit 3.

0.356 ¢/kWh over the three-year suspension period.[6] Accordingly, an average residential ratepayer (600 kWh/month) would see an estimated monthly bill impact of $2.13 for a total cost of $77 over the three-year suspension period. Similarly, a representative small commercial customer (750 kWh/month) would experience an estimated average monthly bill impact of $2.67 for a total cost of $96 over the three-year suspension period. A large commercial customer (using 100,000 kWh/month) would experience an estimated average monthly bill impact of $355.66 for a total cost of $12,804 over the three-year suspension period, and an industrial customer (using 1,000,000 kWh/month) would experience an estimated average monthly bill impact of $3,556.58 for a total cost of $128,037 over the three-year suspension period.

Pursuant to the terms of the Settlement Agreement and the Amended PPA, at the conclusion of the operating year in which the three-year suspension period ends, Berlin Station will be obligated to repay the approximately $82 million Excess Cumulative Reduction Amount to Eversource in the form of a credit against energy payments in each of the 12-monthly payments in the 2022-23 operating year (December 1, 2022, through November 30, 2023).[7] Accordingly, the Amended PPA and the Settlement Agreement effectuate a deferral, rather than a waiver, of repayment of the Excess Cumulative Reduction Amount, and purport to retain the

[6] Due to the inclusion of approximately 17 months of over-market costs in the SCRC for recovery during the 12-month period beginning February 1, 2020, the rate impact for the first year of the suspension period will be 0.4351¢/kWh on an equal cents per kilowatt-hour basis across all rate classes. The rate impact in years 2 and 3 of the suspension period will each reflect only 12 months of over-market costs in excess of the CRF cap.

[7] Pursuant to Order No. 26,198, operation of the CRF cap was suspended "for three years from the date on which the cumulative amount reaches $100 million." Order No. 26,198 at 9. The CRF reached $100 million in September 2019. Accordingly, the three-year suspension period will run from September 2019 through September 2022. Although suspension of the cap will end in September 2022, under the terms of the PPA and the Settlement Agreement, the accrual of over-market costs will continue through November 30, 2022.

original bargain of ratepayers paying no more than $100 million in over-market energy costs during the 20-year term of the PPA.[8]

Viewed as a deferral, and in consideration of the Legislature's mandate to suspend the CRF cap and express finding that the "continued operation" of Berlin Station is "important to … energy infrastructure … and for the attainment of renewable energy portfolio standard goals of fuel diversity, capacity, and sustainability," we find that the Settlement Agreement is reasonable and in the public interest. Indeed, disapproval of the Amended PPA would directly frustrate the express intent of the Legislature as set forth in SB 577.

We further find 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. We agree with the testimony of Assistant Consumer Advocate Pradip Chattopadhyay and Electric Division Director Thomas Frantz that the proposed equal cents per kilowatt-hour allocation of the over-market costs is consistent with a traditional rate design based on customer load.

There is a risk that Berlin Station will be unable to repay the approximately $82 million Excess Cumulative Reduction Amount in 2023.[9] Indeed, it was the potential that Berlin Station "would be forced to shut down sometime in 2020" if the CRF cap was not suspended that prompted passage of SB 577 in the first place. Committee Report on SB 577, House Science, Technology, and Energy Committee, May 2, 2018. In the eventuality that Berlin Station is

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[8] Deleted.

[9] At the January 29 hearing, it was noted that it will likely be difficult for Berlin Station to repay the entire Excess Cumulative Reduction Amount in one year. An inability by Berlin Station to be able to repay the entire amount in one year may result in the plant closing without any repayment to ratepayers. When questioned by the Commission at hearing, the parties could not agree at this time to extend repayment of the Excess Cumulative Reduction Amount to ratepayers over a longer period of time.

unable to repay the Excess Cumulative Reduction Amount, the total over-market cost of the PPA for ratepayers would be nearly double the $100 million originally approved by the Commission in Docket No. DE 10-195. We recognize that one of the goals of SB 577 was to buy "extra time" for Berlin Station and the Legislature to "secure a more permanent solution." *Id.* Our approval of the Amended PPA and the Settlement Agreement reflects that legislative goal.

In order to keep the Commission and the Legislature informed of the rate of growth of the Excess Cumulative Reduction Amount, and the attendant rate impact to Eversource customers, we direct Eversource to submit to the Commission a bi-annual report providing an accounting of the current Excess Cumulative Reduction Amount, the forecast change in the Excess Cumulative Reduction Amount over the remaining term of the CRF cap suspension, and any resulting projected change in rates. Such reports shall be submitted in conjunction with Eversource's SCRC filings.

In addition, given the impact of the suspension of the CRF cap on ratepayers and the Legislative purpose to provide time for Berlin Station to develop a permanent solution to its economic viability, as agreed upon by Berlin Station at the January 29 hearing, we direct Berlin Station to provide bi-annual reports to the Commission and the Legislature beginning on November 1, 2020, outlining Berlin Station's progress toward achieving a permanent solution that will ensure the Excess Cumulative Reduction Amount is repaid. Copies of those reports should be provided to the standing legislative committees with jurisdiction over energy-related issues, specifically the House Science, Technology, and Energy and the Senate Energy and Natural Resources Committees.

Further, pursuant to the authority granted by the Legislature in 2018 N.H. Laws,

ch. 340:2, we direct Berlin Station to submit annually to the Commission Berlin Station's cost and profitability records, which shall include, but not be limited to, the facility's annual capital costs, operating and maintenance costs, generation output (in megawatt hours), revenues from the sale of renewable energy credits (to Eversource and to other load serving entities), Forward Capacity Market revenues, energy market revenues (including ancillary services), any tax benefits received, the value of the tax benefits, and the start and ending dates for the tax benefits. Annual cost and profitability records shall be submitted to the Commission within 60 days of the close of Berlin Station's fiscal year in each year that the CRF cap is suspended. Such cost and profitability records will be exempt from public disclosure under RSA 91-A:5, IV pursuant to 2018 N.H. Laws, ch. 340:2, II.

Based upon the foregoing, it is hereby

ORDERED, that the Settlement Agreement and the Amended PPA are approved; and it is

FURTHER ORDERED, that Eversource shall be allowed to recover all costs of the Amended PPA from customers via a non-bypassable charge as set out in Eversource's Revised Tariff Provision effective February 1, 2020, consistent with Eversource's Stranded Cost Recovery Charge filings in Docket No. DE 19-108; and it is

FURTHER ORDERED, that Eversource shall submit a report to the Commission no later than January 15 and July 15 in each year the cumulative reduction factor cap is suspended setting forth an accounting of the current Excess Cumulative Reduction Amount, the forecast change in the Excess Cumulative Reduction Amount over the remaining term of the cumulative reduction factor cap suspension, and any resulting projected change in rates; and it is

FURTHER ORDERED, that Berlin Station shall submit its cost and profitability records to the Commission annually within 60 days of the close of Berlin Station's fiscal year in each year the cumulative reduction factor cap is suspended; and it is

FURTHER ORDERED, that beginning November 1, 2020, and continuing as long as the cumulative reduction factor cap is suspended, Berlin Station shall submit to the Commission and the Legislature a bi-annual report on Berlin Station's progress toward a permanent solution that allows Berlin Station's continued operation; and it is

FURTHER ORDERED, that the Eversource shall file a compliance tariff with the Commission on or before February 14, 2020, in accordance with N.H. Admin. R., Puc 1603.02(b); and it is

FURTHER ORDERED, that this proceeding shall be held open to receive the reports and records set forth above.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of February, 2020.

Dianne Martin	Kathryn M. Bailey	Michael S. Giaimo
Chairman	Commissioner	Commissioner

Attested by:

Debra A. Howland
Executive Director

Docket #: 19-142 **SERVICE LIST - Email Adresses** Printed: 2/18/2020

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EXHIBIT 4

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DE 10-195

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

Petition for Approval of Power Purchase Agreement with Laidlaw Berlin BioPower, LLC

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

Order *Nisi* Approving Modifications to Orders Nos. 25,213, 26,198, and 26,333 Pursuant to the Terms of SB 271 (2022 N.H. Laws, ch. 275:1)

O R D E R N O. 26,665

August 11, 2022

In this order, we hereby effectuate the General Court's directive established in SB 271 (2022 N.H. Laws, ch. 275:1), signed by the Governor on June 24, 2022, relating to the terms of our Orders issued in these instant Docket Nos. DE 10-195 (Order No. 25,213 (April 18, 2011) and Order No. 26,198 (December 5, 2018) and DE 19-142 (Order No. 26,333 (February 18, 2020) that govern the terms of the Purchase Power Agreement (PPA) discussed herein.

The PPA in question governs the contractual relationship between Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource or the Company) and the Burgess BioPower Plant located in Berlin, New Hampshire (Burgess). Burgess is a 75-megawatt facility that generates electrical power from burning low-grade wood, with the output sold to Eversource to meet a portion of the

electrical energy needs of the Company's default service customers. The Commission is responding to the Legislature's directive contained in SB 271; we will therefore refer to the General Court's language in this Order to ensure that we effectuate the Legislature's intent correctly.

Therefore, notwithstanding any other provision of the law to the contrary, we hereby reopen Docket No. DE 10-195, for the purposes of this Order, and forthwith revise our Order No. 25,213 and our Order Nos. 26,198 and 26,333 in the following manner:

The Commission hereby amends our Order No. 25,213 and Orders Nos. 26,198 and 26,333 issued in Docket Nos. DE 10-195 and DE 19-142 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 No. 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. *See* 2018 N.H. Laws, ch. 340:2, I, *as revised by* 2022 N.H. Laws, ch. 275:1.

Furthermore, as required by 2018 N.H. Laws, ch. 340:2, II and *as revised by* 2022 N.H. Laws, ch. 275:1, we hereby order that the Burgess BioPower plant and its affiliates shall make their capital and operating cost and profit and loss records available to the New Hampshire Department of Energy (DOE) for investigation and audit, any of which records may be exempt from public disclosure under RSA 91-A:5, IV, if reasonably so designated by the Burgess BioPower plant. All such records shall also be made available to the Office of the Consumer Advocate (OCA). 2018 N.H. Laws, ch. 340:2, II, *as revised by* 2022 N.H. Law, ch. 275:1. We further order that these

materials be filed with the Commission contemporaneously with the filings made to the DOE and the OCA. RSA 374:4.

Finally, we note that SB 271 requires the DOE to conduct an investigation and audit of the Burgess BioPower Plant's costs and revenues and submit a report thereon to the House Science, Technology, and Energy Committee and to the Senate Energy and Natural Resources Committee of the General Court on or before December 31, 2022. *See* 2018 N.H. Laws, ch. 340:2, II, *as revised by* 2022 N.H. Laws, ch. 275:1. We order that copies of this report be filed contemporaneously with the Commission, *see* RSA 374:4, and the OCA, when filed with the Legislature.

It 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. *See* Order No. 26,333 (Feb. 18, 2020). We will act expeditiously regarding this future petition, which will be reviewed in a separate, newly created Commission docket.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that pursuant to the terms of SB 271, the revisions to Orders Nos. 25,213, 26,198, and 26,333, are MADE to take effect as of September 12, 2022, as delineated above; and it is

FURTHER ORDERED, that the Burgess BioPower Plant and its affiliates shall make available its and their capital and operating cost and profit and loss records to the New Hampshire Department of Energy for investigation and audit, any of which records may be exempt from public disclosure under RSA 91-A:5, IV, if reasonably so designated by the Burgess BioPower Plant. All such records shall also be made filed to the Office of the Consumer Advocate and the Commission when filed with the New

Hampshire Department of Energy. The New Hampshire Department of Energy shall conduct an investigation and audit of the plant's costs and revenues and submit a report thereon to the House Science, Technology, and Energy Committee and to the Senate Energy and Natural Resources Committee of the General Court on or before December 31, 2022, and the New Hampshire Department of Energy shall also file a copy of this report with the Commission and the Office of the Consumer Advocate contemporaneously; and it is

FURTHER ORDERED, that Eversource shall cause a copy of this order to be published on its website within one business day of this order, and to be documented by affidavit filed with the Commission on or before August 18, 2022; and it is

FURTHER ORDERED, that persons interested in responding to this order be notified that they may submit their comments or file a written request for hearing, stating the reason and basis for a hearing, no later than August 25, 2022, for the Commission's consideration; and it is

FURTHER ORDERED, that any person interested in responding to such comments or request for hearing shall do so no later than September 1, 2022; and it is

FURTHER ORDERED, that this order shall be effective September 12, 2022, unless Eversource fails to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this eleventh day of August, 2022.

Daniel C. Goldner
Chairman

Carleton B. Simpson
Commissioner

Service List - Docket Related

Docket#: 10-095

Printed: 8/11/2022

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Service List - Docket Related

Docket#: 19-142

Printed: 8/11/2022

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STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DE 22-050

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

Petition for Approval of Second Amendment to the Power Purchase Agreement with Berlin Station, LLC

Order *Nisi* Approving Amendment Pursuant to the Terms of SB 271 (2022 N.H. Laws, ch. 275)

O R D E R N O. 26,705

October 14, 2022

In this order, we approve the second amendment to the power purchase agreement between Eversource and Berlin Station, LLC (Agreement), made pursuant to the legislative directive established by the General Court in 2022 N.H. Laws, ch. 275 (SB 271). This order also finds that Eversource's decision to enter into the second amendment of the Agreement, as consistent with a legislative mandate, was reasonable and in the public interest, and that Eversource shall be allowed to recover all costs of the amended Agreement via a non-bypassable rate mechanism as directed by SB 271.

On August 26, 2022, Public Service Company of New Hampshire d/b/a Eversource (Eversource, or the Company) filed its petition and second amendment to the Company's Agreement with Berlin Station, LLC. This filing was made pursuant to the terms of the Commission's Order No. 26,665 (August 11, 2022), issued in Docket Nos. DE 10-195, and DE 19-142, the predecessor dockets to this instant matter, and the terms of SB 271. Order No. 26,665 outlines the background related to SB 271 and the Agreement between Eversource and Berlin Station, LLC, which owns and operates the Burgess BioPower Plant located in Berlin, New Hampshire, a 75-megawatt facility

that generates electrical power from burning low-grade wood, with the output sold to Eversource to meet a portion of the electrical energy needs of Eversource's default service customers. Order No. 26,665 at 1–2.

The Office of the Consumer Advocate (OCA) filed its letter of participation on August 29, 2022. On September 14, 2022, the Commission issued a procedural order clarifying certain matters relating to records to be made available to the OCA and the New Hampshire Department of Energy (DOE) and requesting that the DOE file its recommendation regarding the second amendment to the Agreement by September 23, 2022. On September 27, 2022, the DOE filed its recommendation, supporting Commission approval of the second amendment proposed by the Company.

Eversource's proposed second amendment relates to Section 6.1.4 of the Agreement. It presents the following language:

> Notwithstanding Section 6.1.2 above, beginning with the Operating Year ending on November 30, 2023, if at the end of any Operating Year other than the last Operating Year during the Term, there exists a Cumulative Reduction in excess of One Hundred Million Dollars ($100,000,000), such excess ("Excess Cumulative Reduction") will be credited against amounts otherwise due for Energy delivered to [the Company] during the subsequent Operating Year until such Excess Cumulative Reduction is eliminated. To effect such credit, in each month during the subsequent Operating Year, one twelfth (1/12th) of the Excess Cumulative Reduction ("Monthly Energy Credit") shall be deducted by [the Company] from the Seller's [Berlin Station, LLC's] invoice, up to the full amount of the payment due to Seller pursuant to Section 6.1.2(a), and any excess over that amount shall carry forward to the following month to the Monthly Energy Credit. If, at the end of the Operating Year subsequent to the year during which there was an Excess Cumulative Reduction, any such amount remains, it shall be deducted by [the Company] from the Seller's invoice in the next Operating Year in the same manner described above. If upon expiration of the Term [the Company] does not purchase the facility [Burgess BioPower Plant], Seller shall pay [the Company] the amount of any Excess Cumulative Reduction.

Eversource contends, and the DOE concurs, that this modification to the Agreement effectuates the intent of SB 271, in that the suspension of the cap on the

cumulative reduction factor relating to the Agreement is to continue for one additional year. This cap was originally established by the Commission in Order No. 25,213 (April 18, 2011), and subsequently modified by Commission Order No. 26,198 (December 5, 2018), and Order No. 26,333 (February 18, 2020), and legislative action through 2018 N.H. Laws, chapter 340 (SB 577). *See* Order No. 26,333 at 1–4. These changes had the effect of suspending the cap for a three-year period starting on December 1, 2019, and ending on November 30, 2022. It was the intent of SB 271 to extend the suspension of the cap for one additional year, through November 30, 2023. We agree with Eversource and the DOE that the proposed second amendment to the Agreement accomplishes this task, and we will therefore approve it without modification or conditions.

The Company further requests Commission findings that its decision to enter into the second amendment of the Agreement consistent with a legislative mandate was reasonable and in the public interest, and a Commission order that Eversource shall be allowed to recover all costs of the amended Agreement from customers via a non-bypassable rate mechanism. We find that the amended agreement is consistent with SB 271 and grant Eversource's request.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that pursuant to the terms of SB 271, the second amendment to the Agreement between Eversource and Berlin Station, LLC, as delineated above, is APPROVED; and it is

FURTHER ORDERED, that Eversource's decision to enter into the second amendment of the Agreement consistent with a legislative mandate was reasonable and in the public interest; and it is

FURTHER ORDERED, that Eversource 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 it is

FURTHER ORDERED, that Eversource shall cause a copy of this order to be published on its website within one business day of this order, and to be documented by affidavit filed with the Commission on or before October 21, 2022; and it is

FURTHER ORDERED, that persons interested in responding to this order be notified that they may submit their comments or file a written request for hearing, stating the reason and basis for a hearing, no later than October 28, 2022 for the Commission's consideration; and it is

FURTHER ORDERED, that any person interested in responding to such comments or request for hearing shall do so no later than November 4, 2022; and it is

FURTHER ORDERED, that this order shall be effective November 14, 2022, unless Eversource fails to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of October, 2022.

Daniel C. Goldner
Chairman

Carleton B. Simpson
Commissioner

Service List - Docket Related

Docket#: 22-050

Printed: 10/14/2022

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EXHIBIT 5

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DE 23-091

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

Petition for Adjustment of Stranded Cost Recovery Charge

COMMENCEMENT OF ADJUDICATIVE PROCEEDING AND NOTICE OF HEARING, STATUS CONFERENCE, AND DATA REQUESTS

On December 15, 2023, Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource or the Company) filed a petition requesting that the Commission approve an adjustment to its stranded cost recovery charge (SCRC) for effect on February 1, 2024. In support of its petition, Eversource filed the direct testimony of Yi-An Chen and Edward Davis, both personnel with Eversource's service-company affiliate, Eversource Energy Service Company, and related attachments, including proposed revised tariffs. The petition and other docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are available on the Commission's website at https://www.puc.nh.gov/Regulatory/Docketbk/2023/23-091.html.

I. BACKGROUND

The SCRC is a non-bypassable charge and recovery mechanism established by the Restructuring Settlement Agreement dated August 2, 1999 in Docket No. DE 99-099 (Restructuring Agreement), which was revised and conformed in compliance with the Commission's Order No. 23,549 (September 8, 2000). Its original purpose was to recover a portion of Eversource's stranded costs, and other costs and expenses permitted by the Restructuring Agreement. Restructuring Agreement, Subsection V.B. These stranded costs were divided into three parts: Part 1 was the Rate Reduction

Bonds (RRB) charge; Part 2 consisted of ongoing stranded costs associated with restructuring; and Part 3 costs were the remaining non-securitized stranded costs. *Id.*

The original Part 1 and Part 3 stranded costs have been fully recovered. *Pub. Serv. Co. of N.H.*, Order No. 26,569, at 3 (January 25, 2022). In Docket No. DE 14-238, the Commission approved the 2015 Restructuring and Rate Stabilization Agreement, filed on June 10, 2015 and amended January 26, 2016 (2015 Agreement), which allowed Eversource to recover stranded costs associated with Eversource's divestiture of its generation facilities as new Part 1 costs. *See* Order No. 26,569, at 3 (citing *Pub. Serv. Co. of N.H.*, Order No. 25,920 (July 1, 2016)). In addition, the 2015 Restructuring and Rate Stabilization Agreement provided that Eversource could recover, as Part 2 costs, ongoing independent power producer costs and power purchase agreement (PPA) costs, such as Eversource's existing commitments to buy power from the Burgess BioPower facility in Berlin, New Hampshire (Burgess Plant) and Lempster Wind Power Project in Sullivan County, New Hampshire. *See* 2015 Agreement, Subsections II and III.A.

Pursuant to the 2015 Agreement, the SCRC is allocated to each rate class by different percentages, and there is no uniform SCRC rate charged to all customers or a uniform SCRC rate for each class. Order No. 26,569 at 3-4. The 2015 Agreement required the Company to calculate Part 2 costs for prospective 6-month periods. 2015 Agreement, Subsection III.A.2.

Eversource also uses the SCRC to recover and refund a number of other costs and revenues. Excess Regional Greenhouse Gas Initiative auction proceeds are refunded to Eversource customers through the SCRC pursuant to RSA 125-O:23, II and Order No. 25,664, at 4-5 (May 9, 2014), issued in Docket No. DE 14-048. In Docket No. DE 19-057, the Commission approved a settlement agreement permitting

Eversource to recover certain environmental remediation costs through the SCRC. *Pub. Serv. Co. of N.H.*, Order No 26,433 at 14, 22 (Dec. 15, 2020). The Commission also approved a settlement agreement in Docket No. DE 20-136 providing for an adder to the SCRC that would enable Eversource to recover net metering and group host costs. *Pub. Serv. Co. of N.H.*, Order No. 26,450, at 7-9 (Jan. 29, 2021).

Regarding the Burgess Plant, Ms. Chen's and Mr. Davis's testimony filed on behalf of the Company advised the Commission of recent legislative developments that have major implications for Eversource's calculation of the SCRC for the upcoming rate period. *See* Chen/Davis Testimony, December 15, 2023, at Bates Pages 22 and 23. The Company stated:

> "Due to recent legislative activity (i.e., the Governor's veto of House Bill 142 that was later upheld by the House of Representatives) and in compliance with the terms of the Commission-approved PPA with Berlin Station, LLC (i.e., Burgess), beginning December 1, 2023, Eversource is beginning to return the excess cumulative reduction amount over $100 million to customers. Currently, the excess cumulative reduction amount over $100 million as of November 30, 2023 is approximately $710 million *[sic]* (*the Company's source for the figure cited indicates approximately $71 million*: *Ed.*). Per the terms of the PPA, the excess cumulative reduction amount will be divided by 12 months (approximately $5.9 million per month) and applied against the monthly energy payments being made in accordance with the PPA for monthly energy output purchased, until the excess cumulative reduction amount total is recovered. The energy portion due Burgess monthly for Dec 2023 through Nov 2024 will be offset against the $5.9 million (or as much as is available for offset) and returned back to customers...Per the terms of the PPA, the procurement of Capacity and [Renewable Energy Credit] products will continue and payments will be made to Burgess, as the excess cumulative reduction amount calculation pertains only to the PPA's energy purchases. In addition, with the forecast of ongoing [Burgess Plant] operations, the Ch. 340 Adder monthly excess cumulative reduction amount and reconciliation continues as shown in Attachments YC/EAD-7 and YC/EAD-8, Page 2, line 3." *Id.*

Eversource is currently billing residential customers an SCRC rate of 0.718 cents per kilowatt-hour (kWh), approved by the Commission in Order No. 26,768 (Jan. 30, 2023), issued in Docket No. DE 22-039. In this proceeding, Eversource has

proposed a residential SCRC rate of 0.376 cents per kWh, a reduction of 0.342 cents per kWh.

II. ISSUES PRESENTED

The filing presents, *inter alia*, the following general issues: whether the categories of costs and revenues included in Eversource's proposed SCRC rates are consistent with the requirements of RSA 374-F:3, XII(d) and/or are appropriately included consistent with prior Commission orders; whether Eversource appropriately calculated the SCRC rates to reflect the actual and estimated costs and revenues that are appropriately included in the SCRC; whether the costs Eversource seeks to recover through the proposed adjusted SCRC were prudently incurred; and whether the resulting SCRC rates are just and reasonable, as required by RSA 374:2, and RSA 378:5 and 378:7.

With regards to the matter of the Burgess Plant PPA-related charges and credits, additional specific issues are presented: whether the Chapter 340 Adder calculations and reconciliations presented by the Company are accurate, just and reasonable, and in conformity with the provisions of the Burgess Plant PPA and all other applicable law; whether the Burgess Plant refund presented by the Company, and all other credits and debits associated therewith, are accurate, just and reasonable, and in conformity with the provisions of the Burgess Plant PPA and all other applicable law; the provenance of all monies provided to Eversource ratepayers through the SCRC in connection with the Burgess Plant refund presented by the Company (i.e., the Burgess Plant owners, Eversource, or some combination thereof), and whether these arrangements proposed by Eversource are just and reasonable, and in conformity with the provisions of the Burgess Plant PPA and all other applicable law.

Based on a preliminary review of the petition, testimony, and supporting schedules presented by Eversource relating to the Burgess Plant issues, the Commission sees significant ambiguity and uncertainty in the Company's stated position regarding these matters. To aid in the Commission's review, and that of the New Hampshire Department of Energy (DOE) and the Office of the Consumer Advocate (OCA)[1], for this proceeding, the Commission is promulgating three data requests, listed below, to Eversource regarding the Burgess Plant refund accounting presented by the Company, for which the Commission requires responses not later than December 29, 2023. Furthermore, the Commission requests that the DOE, and any other interested party, file its position statement regarding the Eversource approach for the Burgess Plant issues not later than January 5, 2024. In addition to the hearing scheduled in this matter for January 19, 2024, at 9:00 a.m., the Commission will also hold a Status Conference regarding the Burgess Plant matters on January 11, 2024 at 1:00 p.m.

The Commission will be conducting any hearings scheduled in this matter in person. The Commission will consider requests to use a hybrid format to permit remote participation by a specific individual. Such requests will be granted only if the Commission determines a sufficient reason is provided for why an individual is unable to attend in person. Any party requesting a specific individual be permitted to participate remotely must file a written request with the Commission's Clerk's Office no later than fifteen days prior to the prehearing conference or hearing date. If the Commission determines that one or more individuals will be permitted to appear remotely, then individuals in the Commission's hearing room, including the Commissioners, will be broadcast on a web-enabled platform.

[1] The OCA filed a letter of participation in this matter on November 13, 2023.

III. BURGESS PLANT DATA REQUESTS

Eversource shall respond to the following Commission data requests, pursuant to RSA 374:4 and allied statutes, no later than December 29, 2023:

1. What will be the source of funding for the Burgess Plant refund, included in Eversource's SCRC filing and referenced in the Chen/Davis Testimony at Bates Pages 22-23? Will the refund amounts be paid by the Burgess Plant owner(s) in real time, or will Eversource provide the Burgess Plant refund amounts from its general operating funds, subject to future reconciliation and/or rate recovery? Has Eversource issued an actual demand of the Burgess Plant refund from the Burgess Plant owner(s) in any form, citing the Burgess Plant PPA terms? If so, when and how?
2. Eversource shall provide a more comprehensive narrative description, with supporting tabular presentations and source information citing data through additional attachments as necessary, indicating the flow of Burgess Plant-associated monies in the upcoming SCRC rate period, including any deferral accounts and/or deductions, citing the terms of the Burgess Plant PPA and other applicable authorities that support these adjustments.
3. For Burgess, Eversource shall also provide a simplified one-page summary with reference footnotes to the testimony and relevant attachments, of the $71 million that is due to ratepayers over the 12-month period, February 1, 2023 to Jan 31, 2024 and the line items added or deducted from the $71 million to determine the total refund due to ratepayers attributable to Burgess. The total Burgess refund should be reflected as an annualized number delineating the adjustments from Burgess, with source information, that will yield the final dollar value due to ratepayers over this period.

Based upon the foregoing, it is hereby

ORDERED, that an adjudicative proceeding be commenced for the purpose of reviewing and resolving the foregoing issues pursuant to RSA Chapter 541-A, RSA 374-F:3, XII(d), RSA 374:2, RSA 378:5 and RSA 378:5 and RSA 378:7, and the Commission's procedural rules; and it is

FURTHER ORDERED, that the Commission will hold a hearing in this matter at its offices located at 21 S. Fruit St., Suite 10, Concord, New Hampshire, on January 19, 2024, at 9:00 a.m. Three hours shall be allotted for this hearing; and it is

FURTHER ORDERED, that Eversource shall file its responses to the above Data Requests not later than the close of business on December 29, 2023; and it is

FURTHER ORDERED, that the New Hampshire Department of Energy, and any other interested party, file its written statement of position regarding the Burgess Plant-related issued delineated herein no later than the close of business on January 5, 2024; and it is

FURTHER ORDERED, that the Commission will hold a Status Conference regarding the Burgess Plant-related issues delineated herein at its offices located at 21 S. Fruit St., Suite 10, Concord, New Hampshire, on January 11, 2024, at 1:00 p.m. Three hours shall be allotted for this Status Conference; and it is

FURTHER ORDERED, that any entity or individual may petition to intervene and seek to be admitted as a party in this proceeding. Each party has the right to have an attorney represent the party at the party's own expense; and it is

FURTHER ORDERED, that, consistent with N.H. Admin. R., Puc 203.17 and Puc 203.02, any entity or individual seeking to intervene in the proceeding shall file with the Commission a petition to intervene with copies sent to Eversource and any other parties on the service list, on or before December 29, 2023. The petition shall

state the facts demonstrating how the petitioner's rights, duties, privileges, immunities, or other substantial interests may be affected by the proceeding, consistent with N.H. Code Admin. Rules, Puc 203.17; and it is

FURTHER ORDERED, that any party objecting to a petition to intervene make said objection on or before January 5, 2024; and it is

FURTHER ORDERED, that parties shall file any proposed exhibits, written testimony, motions, or other documents intended to become part of the record in this proceeding with the Commission. Pursuant to the secretarial letter issued on March 17, 2020, which is posted on the Commission's website at https://www.puc.nh.gov/Regulatory/Secretarial%20Letters/20200317-SecLtr-Temp-Changes-in-Filing-Requirements.pdf, all Commission rules requiring the filing of paper copies are suspended until further notice. Parties may elect to submit any filing in electronic form unless otherwise ordered by the Commission. Filings will be considered filed as of the time the electronic copy is received by the Commission; and it is

FURTHER ORDERED, that routine procedural inquiries may be made by contacting the Commission's Clerk's Office at (603) 271-2431 or ClerksOffice@puc.nh.gov. All requests to the Commission should be made in a written pleading filed with the Commission. Unless otherwise authorized by law, *ex parte* communications are prohibited; and it is

FURTHER ORDERED, under N.H. Admin. R., Puc 203.12, Eversource shall notify all entities and individuals desiring to be heard at this hearing by publishing a copy of this order of notice on their websites no later than two business days after the date of issue, such publication to be documented by affidavit filed with the Commission on or before December 29, 2023. In addition, the Clerk shall publish this

order of notice on the Commission's website no later than two business days after the date of issue; and it is

FURTHER ORDERED, that any hearings in this matter shall be conducted in accordance with the attached hearing guidelines.

So ordered, this twenty-second day of December, 2023.

Daniel C. Goldner
Chairman

Pradip K. Chattopadhyay
Commissioner

Carleton B. Simpson
Commissioner

Service List - Docket Related

Docket#: 23-091

Printed: 12/22/2023

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EXHIBIT 6

EXHIBIT K

The State of New Hampshire

ROCKINGHAM COUNTY **SUPERIOR COURT**

Xpress Natural Gas, LLC

v.

Cate Street Capital, Inc.

Docket No. 218-2018-CV-00283

ORDER ON PLAINTIFF'S MOTION TO APPOINT RECEIVER

Plaintiff Xpress Natural Gas, LLC ("Xpress") has brought this action against Defendant Cate Street Capital, Inc. ("CSC") to recover on a judgment Xpress received against CSC from the Maine Superior Court. This Court recognized that judgment on March 29, 2018. See Doc. 3. The Court thereafter issued a Writ of Execution on July 26, 2018, for $2,882,048.23. See Doc. 8. CSC has failed to pay on that judgment. Accordingly, Xpress filed a Motion for Periodic Payments on August 9, 2018. See Doc. 9. At the February 26, 2019, hearing on that motion, Xpress introduced evidence of CSC's financial situation and further moved for the Court to appoint a receiver. See Doc. 20. However, the February hearing did not reach a conclusion, and the Court allowed the parties more time for discovery and for CSC to object to the motion to appoint a receiver. The Court held another hearing on July 30, 2019, at which Xpress introduced evidence concerning a 2011 agreement that CSC had transferred to another company, Cate Street Operations ("CSO") in 2018. Upon consideration of the hearing testimony, the pleadings, and the applicable law, the Court finds and rules as follows.

In seeking the appointment of a receiver, Xpress relies on the remedies offered to creditors under the Uniform Fraudulent Transfer Act, RSA 545-A:7. Xpress claims

that CSC engaged in a fraudulent conveyance when it assigned a project management agreement worth $1 million per year for twenty-one years to CSO for no consideration, at a time when CSC was aware of the judgment against it, in violation of RSA 545-A:5. However, the remedies provided by the Uniform Fraudulent Transfer Act only apply to "action[s] for relief against a transfer or obligation under [RSA 545-A]." See RSA 545-A:7, I. Because this is an action to recover on a judgment, RSA 545-A:7 does not apply here, and Xpress therefore cannot rely on that statute when seeking the appointment of a receiver in this case.

That being said, the Court's equity powers allow it to appoint a receiver in appropriate circumstances. See Munsey v. G.H. Tilton & Son Co., 91 N.H. 51 (1940). "Where there is some evil actually existing, or some evidence of danger to the property, . . . a receiver will be appointed." Ladd v. Harvey, 21 N.H. 514, 521 (1850). "The exercise of the power to appoint a receiver must depend upon sound discretion, and in a case in which it must appear fit and reasonable that some indifferent person under approved security should receive and distribute the issues and profits for the greater security of all the parties concerned." Id. "The basic reason for the appointment of a receiver is to conserve the property for the benefit of all persons interested therein." Petition of Leon Keyser, Inc., 98 N.H. 198, 200 (1953).

Xpress has established that funds belonging to CSC are in danger. Although Xpress obtained a multi-million-dollar judgment against CSC in 2014, CSC's 2016 and 2017 unsigned Federal tax returns show that $10 million of CSC's assets have disappeared since 2016. See Pl.'s Ex. 1, 2 (Feb. 26, 2019). Xpress has shown that although CSC had ample funds to pay the $2,882,048.23 judgment in 2014, within

eighteen months of the issuance of that judgment, CSC's assets rapidly dried up and the corporation was dissolved. A draft of CSC's 2018 profit and loss statement introduced by Xpress also shows CSC reporting a net loss of $9.3 million. See Pl.'s Ex. 3 (Feb. 26, 2019). CSC has not provided a reasonable explanation as to where these funds went or why they rapidly disappeared. CSC claims it decided to write off all of its impaired receivables (totaling $3.5 million) as part of its winding down of business, which would partially explain its swift decrease in value. However, CSC provided only vague statements regarding those receivables, and no explanation regarding the rest of its assets. Under these circumstances, it appears fit and reasonable that the Court appoint a receiver.

That being said, "[t]he court cannot appoint a receiver over assets that do not exist." KeyBank Nat. Ass'n v. Michael, 737 N.E.2d 834, 846 (Ind. Ct. App. 2000). Here, CSC no longer exists as a corporate entity and claims that it has zero assets. Xpress asks the Court to revoke the project management agreement CSC assigned to CSO and give the proceeds from the agreement to the receiver to pay towards the judgment at issue. For the reasons set forth below, the Court concludes that revocation of the agreement is unnecessary. Although CSC and CSO purport to be two distinct corporations, the pleadings and the hearings have established enough facts to treat CSO as a mere continuation of CSC.

"As a general rule, one corporation is not liable for the debts of a corporation whose assets it purchases unless only one corporation remains after the transfer of assets and unless there is an identity of stock, stockholders, and directors between the two corporations." PlasTech Mach. & Fabrication, Inc. v. StemTech, Ltd., Merrimack

Cnty. Super. Ct., No. 217-2010-CV-00741, at 4 (Mar. 10, 2014) (Order, McNamara, J.). However, "successor liability may be imposed on a new corporation where the purchaser is merely the seller, reincarnated under a different entity." Id. "While continuity of ownership is the key factor for imposing successor liability . . . , some courts also look to the adequacy of the consideration given in the asset sale and to whether there is evidence of a purchase made in good faith." Bielagus v. EMRE of New Hampshire Corp., 149 N.H. 635, 644–45 (2003).

In PlasTech, a corporation created after the administrative dissolution of the defendant was found to be a mere continuation of the defendant. PlasTech, at *5. Both corporations did business under the same d/b/a designation, operated from the same place of business, engaged in the same business with the same vendors, and displayed information about both companies on the new corporation's website. Id. The only employee of both corporations was also the only director and officer of both corporations. Id. In addition, the Court found evidence that the new corporation was created "for purposes of avoiding liability," as it was created while the defendant was a judgment debtor to the plaintiff and it disposed of its assets by paying them to its sole shareholder. Id.

The facts of this case are very similar to those of PlasTech. Here, CSO operates out of the same office on Cate Street that CSC used to operate out of. CSC and CSO have all of the same managers and owners, both provide management services, they do similar work for the same vendors and have almost the same name. Moreover, CSC assigned the project management agreement to CSO for no consideration, even though CSC was to be paid $1 million per year for fourteen more years under that agreement.

While CSC claims this assignment was made during its winding down period, it made the assignment well after the judgment at issue was rendered, thereby disposing of a contractually-guaranteed stream of income which it could have used to satisfy the judgment. Under these circumstances, the conclusion that CSO is a mere continuation of CSC is inescapable. Therefore, a receiver may be appointed to observe and hold that portion of CSO's finances that can be attributed to CSC.

Although the present record establishes that CSO is a mere continuation of CSC, CSO is not a party in this case. Pursuant to Super. Ct. Civ. R. 1(d), and in order to protect CSO's due process right to be heard at a meaningful time and in a meaningful manner, Xpress must join CSO as a defendant in this action within fourteen (14) days of the date on the Notice of Decision accompanying this Order. The Court gives CSO thirty (30) days from service to respond to and address the issues discussed in this Order. While CSO may file other pleadings within that timeframe, the filing of such additional pleadings will not toll the time that CSO has to respond to the issues discussed herein. Moreover, the Court is not inclined to hold an additional hearing on this topic except for good cause shown. Thus, if CSO wishes to challenge the factual narrative set forth herein, it must submit in the first instance affidavits or other written, sworn statements which conflict with the facts described herein. The Court will review the filings and issue an order or schedule a hearing.

So Ordered.

September 24, 2019
Date:

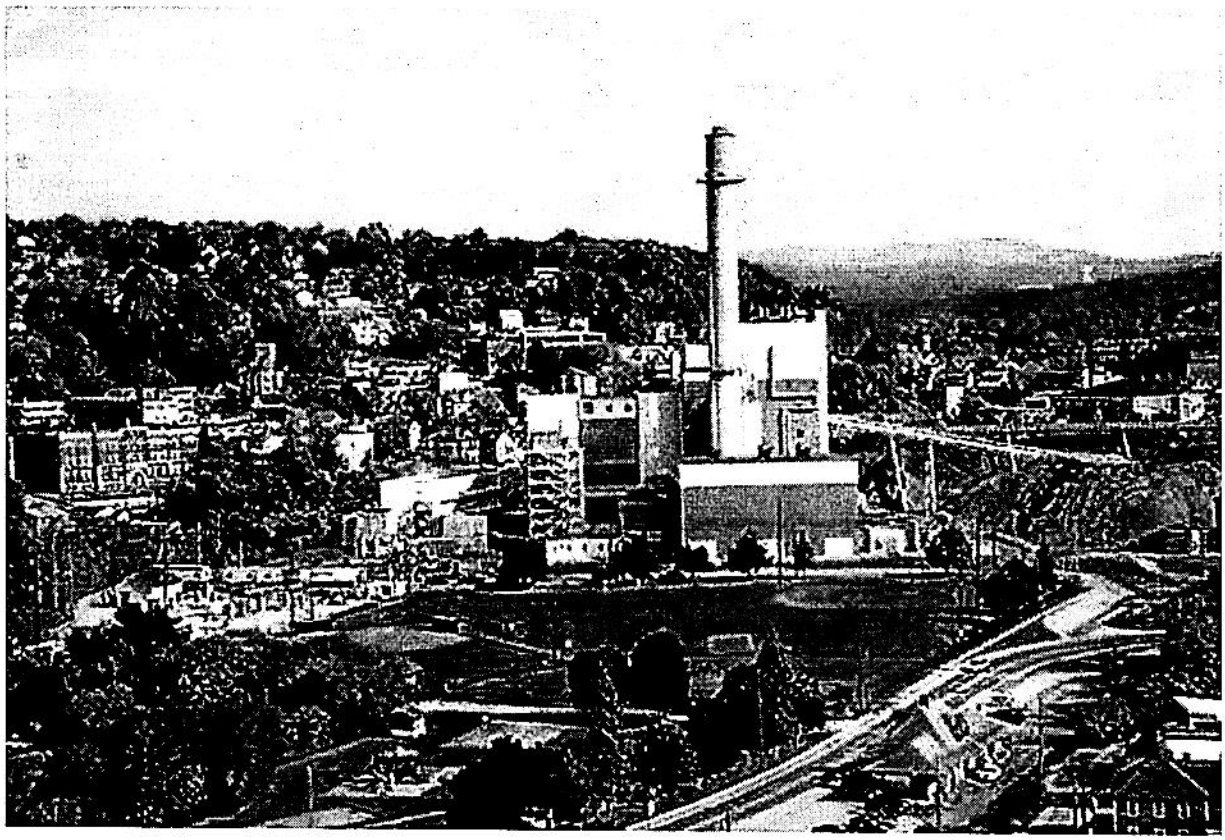
Marguerite L. Wageling
Presiding Justice

EXHIBIT 7

Burgess BioPower, LLC

Bi-Annual Report Required by Public Utilities Commission Order 26,333

May 2, 2022



I. Background on the Facility

Finding a long-term solution to the operation of the Cumulative Reduction Factor ("CRF") contained in the Power Purchase Agreement ("PPA") between Eversource and Berlin Station, LLC[1] is paramount to Burgess BioPower's continued operation and the attendant economic benefits it brings to the State of New Hampshire.

Burgess BioPower is a 75MW biomass power plant that provides reliable, home-grown, baseload energy supply to New Hampshire. Burgess' power advances the state's goals to increase renewable energy and energy independence. Not only does Burgess BioPower contribute significantly to the State's energy profile, the plant also generates major job and economic impacts[2]:

- Burgess has generated **over $550 million in statewide economic activity** in its operating history to date, and is projected to generate **$1.38 billion over 20 years**
- Accounts for **240 jobs** statewide
- **Largest single buyer** of low-grade biomass in the state
- New Hampshire's **largest generator** of renewable energy

In addition to its important economic and energy impact statewide, Burgess contributes significantly to the local Berlin economy through its payments-in-lieu-of-taxes ("PILOT") agreement with the City of Berlin:

- Burgess accounts for **25% of annual water fees** and **10% of annual sewer fees**
- Burgess pays **12% of the city's total annual taxes**
- Burgess has contributed nearly **$1.2 million to the City of Berlin** in just two years from the sale of Renewable Energy Certificates ("RECs")
    - A third payment is anticipated for the summer of 2022
- Closure could place the **City of Berlin into receivership**

Burgess is also a key contributor to New Hampshire's struggling forest products industry. Burgess BioPower purchases more than 800,000 tons of low-grade wood per year and is the largest single buyer of biomass in the state; the project procures biomass from 154 New Hampshire towns across all 10 counties in the state.

And at a time when energy diversity, grid stability, and over-reliance on foreign fuels are key issues, Burgess' value as a baseload energy generator which runs on locally sourced fuel is more important than ever. ISO-NE has repeatedly warned of the potential consequences of New England's over-reliance on natural gas; recent geopolitical events have further underscored the risk of dependence on out-of-state or foreign energy sources. Keeping Burgess operational hedges against these risks.

[1] Berlin Station, LLC is the site/facility owner. Burgess BioPower is the site/facility lessee.

[2] Impacts are outlined in an Economic Impact Study first completed in 2017, refreshed in 2020, and referenced in our November 1, 2020 report.

A breakdown of Burgess' expenditures in key categories from January 2020 through March 2022 is shown below:

Expenditure	Amount
Taxes	3,416,575.69
Berlin Water Works	1,550,961.42
Berlin Pollution Control Facility	382,146.68
REC Revenue Sharing	$1,174,781
Payments to other local businesses	2,365,078.98
Payments to other NH businesses	7,824,174.93
Wood purchases	54,806,697.35

II. Efforts and Challenges to Developing a Long-Term Solution

As documented at length in past reports, Burgess BioPower has undertaken a variety of efforts to find a long-term solution to the CRF challenge, which are summarized again below. Most of these activities took place while simultaneously functioning as an Essential Service throughout the COVID-19 pandemic, generating power without interruption in full compliance with all regulatory mandates.

The Burgess team invested significant time and resources to fully develop a Contract for Differences ("CFD") with Eversource. A CFD is a proven financial tool used extensively in commodity markets, and acts like a "virtual PPA" to limit the exposure of both parties to market price swings. The CFD would have allowed Burgess to reduce or eliminate the accumulation of the CRF and its contribution to stranded cost recovery, but the challenges posed by the default service bidding requirements from Eversource and the PUC proved too great.

Lastly, Burgess pursued other regional economic development projects to reduce and offset the costs of Burgess' power, such as co-development of a number of suitable businesses including a greenhouse, a data center, and a cryptocurrency mining operation; location of an on-site energy generation system using landfill gas; working with the City of Berlin on a waste heat recovery and municipal snowmelt project; and development of ground-mounted solar resources.

The common denominator among all potential co-location partners is simple: no one is willing to put capital at risk to develop a project which relies on a power plant with an uncertain future. Permanently resolving the CRF is the only way any synergistic project will move forward.

III. Status Conference Request

In February 2022, Burgess filed a motion with the NH Public Utilities Commission ("PUC") to convene a status conference with the parties to the DE 19-142 proceeding. The intent of the filing was to convene interested parties in order to discuss and resolve the issues associated with the

docket, including the CRF balance, possible changes to the PPA that would balance costs to ratepayers with protecting the ongoing operation of Burgess, and alternative paths forward.

The PUC denied the motion.

IV. Legislative Activity

In January 2022, Burgess introduced SB 271, legislation which intended to clarify the cost recovery issues with SB 577 and resolve the outstanding balance owed as a result.

The bill was introduced in the Senate, where it was referred to the Energy and Natural Resources Committee ("ENR"). ENR unanimously passed an amended version of the bill, which was again unanimously passed by the full Senate on the Consent Calendar. The version of the bill passed by the Senate is available here.

SB 271 then moved to the House of Representatives, where it was referred to the Science, Technology and Energy Committee ("STE"). STE, acting through its Chair, Rep. Vose, proposed its own amendment, which provides for a continued one-year suspension of the cap on the CRF and requires Burgess BioPower to submit its financial records to the Department of Energy for investigation and audit.[3] STE adopted this amendment by a 20-2 vote. The bill will now go to the full House for consideration in early May.

V. Conclusion

Ultimately, any long-term solution will require the input and cooperation of various stakeholders.

Should Burgess close, ratepayers would lose their existing $100 million investment, the forest products industry would suffer further, and the state of New Hampshire would lose 240 jobs and $1.4 billion in economic activity, along with a baseload power resource that uses local fuel.

Burgess BioPower remains hopeful that the legislative and regulatory processes will result in an outcome that allows the plant to continue operating long-term so that it can continue to contribute to New Hampshire's energy, environmental, and economic goals.

[3] In Order 26,333, the Commission required Burgess to provide cost and profitability records during the SB 577 three-year period. Burgess has submitted that information annually. In addition, while Burgess could have sought confidential treatment of that information, it chose not to, in order to provide transparency regarding its operations.

EXHIBIT 8

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re GNP MAINE HOLDINGS, LLC, Debtor.	Chapter 7 Case No. 14-12179 (MFW) **Hearing Date: TBD** **Objection Deadline: TBD**

PETITIONING CREDITORS' MOTION TO (1) TRANSFER VENUE PURSUANT TO 28 U.S.C. § 1412 AND FED. R. BANKR. P. 1014, AND (2) RESCHEDULE MEETING OF CREDITORS PURSUANT TO 11 U.S.C. §§ 105 AND 341 AND FED. R. BANKR. P. 2003

Petitioning creditors Hartt Transportation Systems, Inc., Lynch Logistics, Inc., and Lynco, Inc. (the "Petitioning Creditors") hereby request that the Court enter an order (1) transferring bankruptcy proceedings for GNP Maine Holdings, LLC (the "Debtor") to the United States Bankruptcy Court for the District of Maine (the "Maine Court"), and (2) rescheduling the meeting of creditors (currently scheduled for October 15, 2014) until after the Court decides the venue issue. In support of this motion (the "Motion"), the Petitioning Creditors state as follows:

PRELIMINARY STATEMENT

Chapter 7 bankruptcy cases are currently pending by the Debtor in this Court, and against the Debtor in the Maine Court. This Court must now decide which of these two courts is the proper venue based on "the interest of justice or for the convenience of the parties." 28 U.S.C. § 1412. Applying the relevant factors under applicable law, the clear focus of the Debtor's bankruptcy case is in Maine, and the only connection to Delaware is that the Debtor is a Delaware entity. ***First***, based on the matrix of creditors filed by the Debtor, more than 56% of the creditor body is in Maine, while less than 1% is in

Delaware, and numerous Maine creditors have consented or expressed support for the relief requested in this Motion. Moreover, upon information and belief, all of the Debtor's assets and operations are in Maine. ***Second***, upon information and belief, most relevant witnesses, including current and former employees and managers, reside in Maine. ***Third***, the case may be more economically administered in Maine because of the Maine Court's familiarity with the history, operations, and constituencies involved, having presided over a previous bankruptcy involving the same mill assets filed in 2002 (and still pending) before the Maine Court. Further, the administrative costs of the case relating to professional fees and travel will be lower in Maine, and thus the distribution to creditors will be enhanced. ***Fourth***, those representing the public interest – including Maine's Attorney General, the towns of East Millinocket and Millinocket, and the employees' unions – have indicated support for the Motion. The Maine-based controversies that are likely to arise in this case should be decided by the Maine Court. For these reasons, the Petitioning Creditors request that the Court enter an order transferring venue to Maine.

A meeting of creditors is currently scheduled in this matter for October 15, 2014. Given that the relevant venue factors all point to Maine, not Delaware, the Petitioning Creditors do not see what can possibly be gained by holding a meeting so far removed from most of the Debtor's active creditor body, which wishes to be meaningfully involved in examining the Debtor about its operations, assets, and liabilities at such a meeting. They are also concerned that much may actually be lost by a temporary trustee incurring unnecessary and duplicative administrative expenses preparing for such a rushed meeting when the Debtor has, to date, failed to file any of its schedules and

statements. Given that there is little to be gained from holding the meeting on October 15th, and much may be lost as a result, the Petitioning Creditors request that the Court exercise its inherent authority to reschedule the meeting.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157(a), and the standing order of reference entered by the United States District Court for the District of Delaware on February 29, 2012.

2. This matter is a core proceeding under 28 U.S.C. § 157(b)(2), and this Court has Constitutional authority to enter a final order on this Motion.

3. Venue is proper both in this Court and in the Maine Court pursuant to 28 U.S.C. §§ 1408 and 1409.

FACTUAL BACKGROUND

4. On September 22, 2014 (the "Petition Date"), the Debtor filed a voluntary petition for relief in this Court pursuant to chapter 7 of title 11 of the United States Code (the "Bankruptcy Code").

5. According to a video posted on the Debtor's website, the Debtor's paper mill in northern Maine has operated for over 100 years, and at the turn of the century, the mill was the largest paper mill in the world. See www.greatnorthernpaper.com. Upon information and belief, all the Debtor's assets and operations are located in Millinocket and East Millinocket, Maine.

6. On the Petition Date, the Debtor also filed: (a) a creditors' matrix listing 1,159 creditors, including 652 creditors in Maine (56.25%) and only 10 in Delaware

(.86%); and (b) a disclosure that the Debtor paid its Delaware attorney $135,302 in the 3 days prior to the Petition Date.

7. A meeting of creditors under section 341 of the Bankruptcy Code has been scheduled in Wilmington, Delaware on October 15, 2014 (the "Meeting of Creditors").

8. On September 23, 2014, without notice or knowledge of the voluntary filing, the Petitioning Creditors filed an involuntary petition for relief against the Debtor under chapter 7 of the Bankruptcy Code in the Maine Court, Case No. 14-10756.

9. Promptly upon learning of the Debtor's voluntary filing in this Court, the Petitioning Creditors filed a notice with the Maine Court pursuant to Rule 1014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") advising the Maine Court of the case pending before this Court, and on September 24, 2014, the Maine Court entered an order staying further proceedings "pending determination by the Delaware Bankruptcy Court where the case should proceed."

10. On September 24, 2014, the Petitioning Creditors also filed a notice with this Court pursuant to Bankruptcy Rule 1014 advising this Court of the case pending before the Maine Court, and on September 25, 2014, this Court entered an order scheduling a status conference in this case for October 22, 2014.

11. Prior to filing this Motion, counsel for the Petitioning Creditors discussed the relief requested herein with other central constituencies of the Debtor's creditor body.

(a) Maine's Attorney General, through counsel, has indicated her support for transferring venue to the Maine Court.

(b) The towns of Millinocket and East Millinocket, through counsel, have indicated their support for transferring venue to the Maine Court and anticipate filing papers joining in the Motion.

(c) The United Steelworkers and the International Association of Machinists and Aerospace Workers (together, the "Unions") represent most of the Debtor's current and former employees. Through counsel, the Unions indicate that, under the circumstances of this case, they support transferring venue to the Maine Court so that the Debtor's employees and their local representatives may more easily and fully participate.

(d) As of the time of the filing of this Motion, the following trade creditors listed on the Debtor's creditors' matrix have consented to the Motion, either directly or through counsel: Affiliated Healthcare Systems of Bangor, Maine; Cross Insurance of Bangor, Maine; SPC Transport, Co. of Auburn, Maine; H.C. Haynes, Inc. of Winn, Maine; Timberland Trucking, Inc. of Millinocket, Maine; Gerald Pelletier, Inc. of Millinocket, Maine; Millinocket Fab & Machine Inc. of Millinocket, Maine; Maine Environmental, LLC of Hermon, Maine. The Petitioning Creditors will supplement this list as necessary.

RELIEF REQUESTED

12. Pursuant to 28 U.S.C. § 1412 and Bankruptcy Rule 1014, the Petitioning Creditors request that this Court enter an order transferring venue for the Debtor's bankruptcy proceedings to the Maine Court "in the interest of justice or for the convenience of the parties."

13. Pursuant to sections 105 and 341 of the Bankruptcy Code and Bankruptcy Rule 2003, the Petitioning Creditors further request that this Court enter an order rescheduling the Meeting of Creditors until after the Court decides the venue issue.

BASIS FOR RELIEF

I. Venue Transfer

A. Relevant Legal Standard

14. Under 28 U.S.C. § 1412, a court "may transfer a case or proceeding under title 11 to a district court for another district, in the interest of justice or for the convenience of the parties." Under Bankruptcy Rule 1014, this standard applies whether

the court is considering venue issues in the context of a single case in a single district, or multiple cases in multiple districts, relating to a single debtor.

15. The decision to transfer venue is solely within the discretion of the bankruptcy court. In re Centennial Coal, Inc., 282 B.R. 140, 146 (Bankr. D. Del. 2002). The party requesting transfer of forum bears the burden of proof, but "if the party meets its burden by the preponderance of the evidence, the court in its discretion may transfer a case in the interest of justice or for the convenience of the parties." In re Rehoboth Hospitality, LP, No. 11-12798 (KG), 2011 WL 5024267, at *3 (Bankr. D. Del. Oct. 19, 2011).

16. In determining whether to transfer a case, bankruptcy courts consider the following relevant factors:

(a) proximity of creditors of every kind to the court;
(b) proximity of the debtor;
(c) proximity of witnesses who are necessary to administration of the estate;
(d) the location of the debtor's assets;
(e) the economic administration of the estate; and
(f) the necessity for ancillary administration in the event of liquidation.

In re Innovative Commc'n Co., 358 B.R. 120, 126 (Bankr. D. Del. 2006); see also 1 Alan Resnick & Henry Sommer, Collier on Bankruptcy ¶ 4.05[3][a][ii], at 4-33 to 4-34 (16th ed. rev. 2014).

17. The court "also has discretion to consider other private and public interest factors." In re Qualteq, Inc., No. 11-12572 (KJC), 2012 WL 527669, at *5 (Bankr. D. Del. Feb. 16, 2012) (citing Innovative Commc'n, 358 B.R. at 126-27). Such private and public interest factors include "the state's interest in having local controversies decided

within its own borders." Hechinger Inv. Co. of Del., v. M.G.H. Home Improvement, Inc., 288 B.R. 398, 402-03 (Bankr. D. Del. 2003).

B. Venue Should be Transferred to Maine Because (1) Most of the Debtor's Creditors and All of its Assets and Operations Are in Maine, (2) Most Witnesses Necessary to Administration of the Estate Are in Maine, (3) the Case May be More Economically Administered in Maine, and (4) Maine has a Public Interest in Having Local Controversies Decided Within its Own Borders

18. In the Debtor's case, the factors relevant to venue favor Maine, rather than Delaware. ***First***, while the Debtor itself is undisputedly a Delaware entity, none of its assets or operations are in Delaware. Over 56% of the Debtor's creditors are in Maine, while less than 1% are in Delaware. As one bankruptcy court noted in a similar venue dispute between Massachusetts and Delaware:

> [T]he Debtor's contacts with Delaware are minimal . . . . Other than the Debtor being incorporated there . . . there is no other apparent connection to Delaware . . . . The Debtor's contacts with Massachusetts are substantial, more so than any other place in the World. The Debtor's operations are here; its assets are here; its current and former employees are here; and its management is here. Many of its creditors (measured in both numbers of creditors and the amounts owed to them) are here, too, notably from the list of the 30 largest unsecured creditors . . . . Clearly, the Debtor's venue selection was not based on the convenience of these constituencies given their geographic connection to Massachusetts.

In re Malden Mills Indus., Inc., 361 B.R. 1, 10 (Bankr. D. Mass. 2007) (Rosenthal, J.). Similarly in this case, the Debtor's contacts with Delaware are minimal, while the contacts with Maine "are substantial, more so than any other place in the World." This factor, therefore, favors transfer to Maine.

19. ***Second***, most key witnesses necessary to resolve disputes about administration of the Debtor's estate, such as current and former employees and managers, are likely in Maine, not Delaware. Thus, these witnesses are likely beyond

this Court's subpoena power. Even if such witnesses are willing to voluntarily appear in Delaware to participate in these proceedings, the travel costs would impose a significant expense on the estate. This factor also favors transfer to Maine.

20. ***Third***, the Debtor's bankruptcy proceedings may be more economically administered in Maine than Delaware. The Maine Court is very familiar with the Debtor's history, operations, and constituencies, having presided over previous bankruptcy proceedings involving the same mill assets that began in 2002 and still remains pending before the Maine Court today. See Malden Mills, 361 B.R. at 10 ("This Court is very familiar with the facts and litigants, having presided over the Debtor's previous reorganization in Massachusetts."); see also In re Consol. Equity Props., Inc., 136 B.R. 261, 267 (D. Nev. 1991) (transferring venue from Texas to Nevada due to Nevada court's familiarity with facts). The Maine Court's familiarity will likely provide great efficiency to resolving this case. Further, administrative expenses relating to professional fees and travel will be dramatically lower in Maine than in Delaware, and thus the ultimate distribution to creditors will be enhanced. This factor also favors transfer to Maine.

21. ***Fourth***, Maine has a substantial public interest in having local controversies resolved by courts within its borders. The largest "public interest" creditors and parties-in-interest – the State of Maine (through its Attorney General) and the towns of Millinocket and East Millinocket (where the Debtor's assets are located) – have indicated support for venue transfer to Maine. The Maine-based controversies that are likely to arise in this case should be decided by the Maine Court. For instance, the town East Millinocket has contracted with the Debtor to have its municipal wastewater treated

by the mill's secondary wastewater treatment plant; the potential health and safety issues are local ones. Similarly, given the cold temperatures this time of year in northern Maine, the Debtor's mill must be begin to be heated in the near term to maintain the operability and value of the paper machines; again, this issue is best handling locally rather than remotely. Further, the Unions, which represent most of the Debtor's current and former employees – nearly all of whom reside in northern Maine – have expressed support for this Motion under the circumstances of this case so that the employees and their local representatives may more easily participate. This factor also favors transfer to Maine.

22. Given the context of this matter, and thus the weight of the factors tips strongly toward Maine under 28 U.S.C. § 1412 and Bankruptcy Rule 1014.

II. Rescheduling Meeting of Creditors

A. Relevant Legal Standard

23. A meeting of creditors must be held "within a reasonable time after the order for relief . . . [and] the United States Trustee shall convene and preside" at such a meeting. 11 U.S.C. § 341(a). In general, the meeting must "be held no fewer than 21 and no more than 40 days after the order for relief." Fed. R. Bankr. P. 2003(a). The statute and rules provide certain exceptions to both the scheduling and timing of such meetings. See, e.g., 11 U.S.C. § 341(e) (pre-packaged plan filed); Fed. R. Bankr. P. 2003(a) (appeal of motion to vacate order for relief; motion to dismiss case).

24. "Although the rules do not address the issue, there is little doubt that the court has authority to change the date of the section 341 meeting or to make other orders concerning the meeting." 3 Collier on Bankruptcy ¶ 341.02[1], at 341-7; see also In re

Vance, 176 B.R. 772 (Bankr. W.D. Va. 1995) ("It is, therefore, imperative and appropriate that this Court have jurisdiction over section 341 meetings, their scheduling, continuances, and so forth, if necessary"); In re Astri Inv., Mgmt. & Secs. Corp., 88 B.R. 730 (D. Md. 1988).

B. The Meeting of Creditors Should be Rescheduled to Avoid Unnecessary and Duplicative Administrative Expenses and to Ensure That the Meeting Serves the Core Purposes of 11 U.S.C. § 341

25. As described above, the relevant venue factors all point to Maine, not Delaware. In light of this, the Petitioning Creditors do not see what can possibly be gained by rushing to hold the Meeting of Creditors in Wilmington, Delaware, far removed from most of the Debtor's creditors and other parties-in-interest, who are located in northern Maine.

26. ***First***, the Debtor's insolvency in Maine has been an unusually extended and public affair. Since the Debtor shuttered its mill in early 2014, there have been dozens of news stories in Maine about the Debtor's failure to pay its creditors, including municipal taxes and trade vendors. According to public records, approximately 20 trade creditors, including the Petitioning Creditors, have obtained judgments and were in various stages of enforcement and execution on the Petition Date. The municipal creditors had or were in the process of recording liens against the Debtor's assets. This active creditor body wishes to be involved in examining the Debtor at any meeting of creditors, and holding such a meeting in Delaware rather than Maine will deny these creditors meaningful involvement.

27. ***Second***, as of the date of this Motion, the Debtor has failed to file any of its required schedules and statements. Rushing to hold the Meeting of Creditors without

the benefit of this foundational information about assets and liabilities undermines "[t]he chief function of the meeting" which is "for creditors to . . . examine the debtor and be heard generally in an advisory capacity on questions concerning administration of the estate." 3 Collier on Bankruptcy ¶ 341.01, at 341-4. Asking creditors to proceed with the Meeting of Creditors in any forum without the opportunity to analyze this information is both wasteful and unproductive. Moreover, even if the Debtor files the schedules and statements within the time allowed by Bankruptcy Rule 2003(a), the trustee and creditors will have only a week to analyze the documents, which may be insufficient time to examine the anticipated volume of documents.

28. ***Third***, the Petitioning Creditors are concerned about the administrative expenses that will be incurred if the interim trustee holds the Meeting of Creditors before the Court decides the venue issues. The trustee will certainly need to expend significant time and resources to adequately prepare for the meeting and learn about the Debtor's business operations, assets, and liabilities. If the matter is promptly transferred to Maine, as requested above, an eligible interim trustee can promptly schedule and hold a meeting of creditors in Maine, close to most of the Debtor's creditors and other parties-in-interest.

29. ***Fourth***, some have suggested that the Meeting of Creditors should be held promptly in Delaware, and if this Court transfers the case to Maine, the new trustee may hold an additional meeting. This sort of unnecessary duplication of efforts in the two jurisdictions will harm creditors and reduce the funds available for an ultimate distribution.

30. For these reasons, the Petitioning Creditors request that the Meeting of Creditors be rescheduled until after the Court decides venue issues.

WHEREFORE, the Petitioning Creditors respectfully request that the Court enter an order (1) granting the Motion, (2) transferring venue of the Debtor's bankruptcy proceedings to the Maine Court pursuant to 28 U.S.C. § 1412 and Bankruptcy Rule 1014, and (3) rescheduling the Meeting of Creditors until after the Court decides venue issues pursuant to sections 105 and 341 of the Bankruptcy Code and Bankruptcy Rule 2003.

Dated: September 26, 2014
Wilmington, DE

BAYARD, P.A.

/s/ Evan T. Miller

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	Chapter 7
GNP MAINE HOLDINGS, LLC,	Case No. 14-12179 (MFW)
Debtor.	**Related D.I.:** _____

ORDER GRANTING PETITIONING CREDITORS' MOTION TO (1) TRANSFER VENUE PURSUANT TO 28 U.S.C. § 1412 AND FED. R. BANKR. P. 1014, AND (2) RESCHEDULE MEETING OF CREDITORS PURSUANT TO 11 U.S.C. §§ 105 AND 341 AND FED. R. BANKR. P. 2003

Upon the Petitioning Creditors' *Motion to (1) Transfer Venue Pursuant to 28 U.S.C. § 1412 and Fed. R. Bankr. P. 1014, and (2) Reschedule Meeting of Creditors Pursuant to 11 U.S.C. §§ 105 and 341 and Fed. R. Bankr. P. 2003*;[1] and upon all documentation filed in connection with the Motion, including any objections thereto; and notice of the Motion having been properly and sufficiently provided; and it appearing that no other or further notice is required; and sufficient cause appearing therefor;

IT IS HEREBY:

1. ORDERED that the Motion is GRANTED; and it is further

2. ORDERED that venue of the Debtor's bankruptcy proceedings is hereby transferred to the United States Bankruptcy Court for the District of Maine pursuant to 28 U.S.C. § 1412 and Fed. R. Bankr. P. 1014 in the interests of justice or for the convenience of the parties; and it is further

3. ORDERED that the Meeting of Creditors scheduled for October 15, 2014 is hereby cancelled pursuant to 11 U.S.C. §§ 105 and 341 and Fed. R. Bankr. P. 2003.

[1] Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion.

Dated: _____ ___, 2014
Wilmington, Delaware

_____
Honorable Mary F. Walrath
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re GNP MAINE HOLDINGS, LLC, Debtor.	Chapter 7 Case No. 14-12179 (MFW) **Related D.I.: 10**

ORDER GRANTING PETITIONING CREDITORS' MOTION TO (1) TRANSFER VENUE PURSUANT TO 28 U.S.C. § 1412 AND FED. R. BANKR. P. 1014, AND (2) RESCHEDULE MEETING OF CREDITORS PURSUANT TO 11 U.S.C. §§ 105 AND 341 AND FED. R. BANKR. P. 2003

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IT IS HEREBY:

1. ORDERED that the Motion is GRANTED; and it is further

2. ORDERED that venue of the Debtor's bankruptcy proceedings is hereby transferred to the United States Bankruptcy Court for the District of Maine pursuant to 28 U.S.C. § 1412 and Fed. R. Bankr. P. 1014 in the interests of justice or for the convenience of the parties; and it is further

[1] Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion.

3. ORDERED that the Meeting of Creditors scheduled for October 15, 2014 is hereby cancelled pursuant to 11 U.S.C. §§ 105 and 341 and Fed. R. Bankr. P. 2003.

Dated: Oct. 3, 2014
Wilmington, Delaware

Honorable Mary F. Walrath
United States Bankruptcy Judge