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STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

February 14, 2024 - 1:00 p.m.
21 South Fruit Street
Suite 10
Concord, NH

**RE: DE 23-091
PUBLIC SERVICE COMPANY OF NEW
HAMPSHIRE d/b/a EVERSOURCE ENERGY:**
Petition for Adjustment to Stranded
Cost Recovery Charge.
*(Hearing to discuss the implications
of Burgess BioPower, LLC's and Berlin
Station, LLC's Chapter 11 bankruptcy
filings)*

PRESENT: Chairman Daniel C. Goldner, *Presiding*
Commissioner Pradip K. Chattopadhyay
Commissioner Carleton B. Simpson

Alexander Speidel, Esq./*PUC Legal Advisor*
Doreen Borden, Clerk

APPEARANCES: **Reptg. Public Service Company of New
Hampshire d/b/a Eversource Energy:**
David K. Wiesner, Esq.

Reptg. Residential Ratepayers:
Michael J. Crouse, Esq.
Matthew J. Fossum, Esq.
Marc H. Vatter, Dir./*Economics & Finance
Office of Consumer Advocate*

Reptg. New Hampshire Dept. of Energy:
Matthew C. Young, Esq.
Marie-Helene Bailinson, Esq.
Thomas C. Frantz, Dir./*Reg. Support Div.*
Stephen R. Eckberg, *Electric Group
(Regulatory Support Division)*

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

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24

I N D E X

PAGE NO.

SUMMARY OF THE HEARING BY CHAIRMAN GOLDNER	3
PROCESS FOR HEARING BY CHAIRMAN GOLDNER	3
OPENING STATEMENT BY MR. WIESNER	7
QUESTIONS BY:	
Chairman Goldner	14, 42, 45
Cmsr. Simpson	36
Cmsr. Chattopadhyay	37, 48
Mr. Crouse	54
Mr. Fossum	57
FOLLOW-ON STATEMENT BY MR. YOUNG <i>(Ref. to question by Cmsr. Chattopadhyay)</i>	44
FOLLOW-ON STATEMENT BY MR. CROUSE <i>(Ref. to earlier question by Chairman Goldner on participating in the bankruptcy proceeding)</i>	56
STATEMENT BY MR. YOUNG <i>(Re: SCRC rates, February 21 hearing, and intervening in the bankruptcy proceeding)</i>	60
FOLLOW-ON QUESTIONS BY CHAIRMAN GOLDNER	61
QUESTION BY CHAIRMAN GOLDNER <i>(Re: Witnesses for Feb. 21 upcoming hearing)</i>	64
RESPONSES BY:	
Mr. Crouse	64
Mr. Young	65
Mr. Wiesner	65
<u>NOTE:</u> See Procedural Order on Record Requests issued on February 15, 2024, in this docket	66

1
2
3
4
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P R O C E E D I N G

CHAIRMAN GOLDNER: Okay. Good afternoon. I'm Chairman Goldner, presiding over this afternoon's hearing in Docket 23-091, the Company's SCRC proceeding, scheduled pursuant to a procedural order issued on February 12th, 2024, and confirmed by a procedural order issued yesterday, February 13th. I'm joined by Commissioner Simpson and Commissioner Chattopadhyay.

This hearing relates to developments in connection with the Burgess BioPower and Berlin Station bankruptcy filings made in Delaware this past week and reported in the local press. We also take note of Eversource's responsive motions and supportive documents filed with the Delaware Bankruptcy Court, and filed with the Commission yesterday.

Before taking appearances, I would like to indicate that the Commission will open this hearing by directing questions to Attorney Wiesner and Eversource. Following this, we will grant leave to the Department of Energy and the Office of the Consumer Advocate to make

1 statements on the record and to ask questions of
2 their own. We do not necessarily expect to take
3 sworn testimony today, but, if it is advisable,
4 we'll make accommodations for doing so.

5 Beyond these general parameters, we'll
6 have a fairly open format for today's hearing.
7 Our purpose is to gather needed information, and
8 on the record, in a transparent way.

9 Now, let's take appearances, beginning
10 with the Company.

11 MR. WIESNER: Good afternoon,
12 Commissioners. I'm David Wiesner, representing
13 Public Service Company of New Hampshire, doing
14 business as Eversource Energy.

15 With the indulgence of the Commission,
16 I would offer to make an opening statement when
17 the time's appropriate, and then entertain
18 questions from the Bench.

19 CHAIRMAN GOLDNER: Thank you. And the
20 Office of the Consumer Advocate?

21 MR. CROUSE: Good afternoon,
22 Commissioners. Joining with me today is my
23 esteemed colleague, Matthew Fossum, he is our new
24 attorney and the Director of Regional and Federal

1 Affairs. And I am Michael Crouse, Staff
2 Attorney, representing residential ratepayers in
3 this matter.

4 Thank you.

5 CHAIRMAN GOLDNER: Thank you. Welcome,
6 Attorney Fossum.

7 And the New Hampshire Department of
8 Energy?

9 MR. YOUNG: Good afternoon,
10 Commissioners. Matthew Young, on behalf of the
11 Department of Energy. With me today, starting
12 from my direct left, is Steve Eckberg, who is a
13 Utility Analyst in the Electric Division;
14 Marie-Helene Bailinson, who is Co-Counsel in this
15 docket; and Tom Frantz, who is the Director of
16 the Regulatory Support Division.

17 CHAIRMAN GOLDNER: Very good.

18 So, Attorney Wiesner, you wanted to
19 make a brief opening statement. I think that
20 would be -- that would be fine. I think the
21 Commission has a series of questions that we'd
22 like to go through. But, if you have a brief
23 opening statement, that would, of course, be
24 fine.

1 MR. WIESNER: I do have some hope that,
2 in the course of my statement, which may not be
3 considered "brief", that some of the questions
4 will be answered. And I think it would be
5 helpful to sort of recap some of the recent
6 developments, since we were here in January for
7 the hearing, the evidentiary hearing on the SCRC.

8 CHAIRMAN GOLDNER: Can I ask you,
9 Attorney Wiesner, how long your comments are?
10 Because I think we've got a pretty good
11 understanding of the filings and the situation.
12 And we are prepared to go through our line of
13 questioning in a very efficient manner.

14 MR. WIESNER: Maybe ten minutes,
15 probably less.

16 CHAIRMAN GOLDNER: Do any of the other
17 parties want to make any kind of opening
18 statement today or --

19 MR. CROUSE: The OCA was not planning
20 on making an opening statement. But there's some
21 questions we'll have with regard to this matter.

22 CHAIRMAN GOLDNER: Attorney Young?

23 MR. YOUNG: The Department didn't have
24 any prepared remarks.

1 CHAIRMAN GOLDNER: Attorney Wiesner,
2 can you give us the abbreviated version please?

3 MR. WIESNER: I will try to do that.

4 CHAIRMAN GOLDNER: Thank you.

5 MR. WIESNER: So, you know, as the
6 Commission is aware, the legislative suspension
7 on implementation of the PPA netting and
8 recoupment expired at the end of November 2023,
9 with the start of the new operating year for the
10 Burgess plant. The netting and recoupment
11 mechanisms are now in effect, and the Company
12 exercised those rights for the first time with
13 the invoice prepared in late January for the
14 Burgess Plant energy production during the month
15 of December.

16 At the end of November 2023, the Excess
17 Cumulative Reduction Amount under the PPA was
18 approximately \$71.5 million, as the Commission is
19 aware. The PPA authorizes Eversource to net and
20 recoup some portion of that balance in two
21 different ways. First, against energy, under
22 Section 6.1.4(c), and also more broadly under
23 Section 10.3. And I believe the Commission is
24 aware, based on the record request responses that

1 we submitted in January, that the Company did, in
2 fact, net against payments for RECs and capacity,
3 as well as for energy, in the January invoice.

4 Those rights were exercised, and that
5 netting occurred, in the effort -- in the pursuit
6 by the Company to obtain the maximum benefit for
7 its customers, as the netting mechanisms are, of
8 course, the primary means of recouping the
9 defined portion of the above-market payments
10 previously made to Burgess. And it's important
11 to note that Eversource does not profit in any
12 way from its administration and enforcement of
13 the Burgess PPA. All costs and benefits of the
14 PPA are passed through to customers, as
15 previously approved by the Commission.

16 I will summarize this portion, after
17 Eversource exercised its netting and recoupment
18 rights in accordance with the PPA, with respect
19 to the invoice for December 2023 production, the
20 Burgess companies claimed that the Company had no
21 right to do that; the Company responded.

22 Ultimately -- I should say, in that response, the
23 Company sought to exercise the mandatory Binding
24 Arbitration Rules and Alternative Dispute

1 Resolution Procedures under the PPA. Burgess
2 responded eventually by asserting that it
3 could -- that the Company had breached the
4 Agreement, and that they were terminating the PPA
5 and the related Option Agreement.

6 As the Commission is aware, last
7 Friday, on the 9th, the Burgess companies filed
8 for Chapter 11 bankruptcy in Delaware. As noted
9 in our letter filed yesterday, we were given no
10 prior notice of those bankruptcy filings, nor
11 were any of the related documents provided for
12 our review in advance of those filings.

13 In particular, we were not informed
14 that the power plant would continue to operate,
15 while the Burgess companies sought to reject the
16 PPA and change the Lead Market Participant from
17 Eversource to a Burgess affiliate. Eversource is
18 working with a team of expert bankruptcy
19 attorneys, and that team has mounted an intensive
20 effort to protect the Company's and, ultimately,
21 its customers' interests in the bankruptcy
22 proceedings.

23 Today, as the Commission is aware, we
24 filed several objections and one motion with the

1 Bankruptcy Court. Those filings include an
2 objection to the Debtors' Motion for Approval to
3 Enter into a New Lead Market Participant
4 Agreement, and the Motion to Transfer Venue from
5 the Delaware Bankruptcy Court to the New
6 Hampshire Bankruptcy Court.

7 The Company currently intends to file
8 an objection to the Burgess companies' PPA
9 rejection motion prior to the Bankruptcy Court
10 hearing on motions and objections that is now
11 scheduled for next Wednesday morning.

12 As we noted in the letter filed
13 yesterday, it's our position that Eversource has
14 not breached the PPA, and no grounds for
15 termination or rejection of the PPA exists.
16 Therefore, the PPA remains in full force and
17 effect, and is binding both on Eversource and on
18 Burgess. In particular, it remains in effect
19 with respect to the netting and recoupment
20 mechanisms and the ADR provisions of the PPA.

21 And, in the context of fully litigated
22 bankruptcy proceedings, Eversource's key
23 objective will be to defend its rights to
24 administer and enforce the PPA as written,

1 including implementation of the netting and
2 recoupment, the Right of First Refusal, and the
3 related purchase option.

4 That said, parties in the bankruptcy
5 proceedings have engaged in settlement
6 negotiations, and those negotiations are ongoing.
7 Now, I'm not personally involved in those
8 discussions. But my understanding is they are
9 being driven by the secured creditors, who
10 understandably have a strong financial interest
11 in the future operation and/or sale of the
12 Burgess plant. It will be premature at this time
13 to speculate as to the ultimate outcome of those
14 settlement negotiations. If no settlement is
15 reached, then the bankruptcy will continue in
16 Delaware, or in New Hampshire, if the Company's
17 Motion to Transfer Venue is granted, and those
18 proceedings may take a significant period of time
19 to run their course. Although bankruptcy
20 proceedings may be very dynamic and move quite
21 quickly, they do proceed on their own schedule,
22 and that schedule may not align with matters
23 pending before any state regulatory body,
24 including the Commission.

1 And, as our letter also sought to
2 clarify, our view is the focus of the SCRC
3 adjustment proceeding should be on the
4 reasonableness of the Company's estimates of
5 future Burgess PPA payments and netted amounts
6 for purposes of the Part 2 costs and the Chapter
7 340 Adder.

8 As the Commission is aware, the SCRC is
9 a fully reconciling rate mechanism, that is
10 based, in large part, on forecasts and estimates
11 for future periods, which will undoubtedly prove
12 to be different from actual events as they
13 unfold. There is an inherent uncertainty in any
14 such reconciling rate mechanism that is addressed
15 through the periodic true-up that now occurs on
16 an annual basis through the SCRC. Of course,
17 that uncertainty is heightened this year, because
18 of the expiration of the Burgess PPA cap
19 suspension, the payment dispute raised by
20 Burgess, and the recent bankruptcy filings by the
21 Burgess affiliates.

22 In view of that heightened uncertainty,
23 I would ask that the Commission consider an
24 alternative approach for the proceedings in this

1 docket going forward. As I noted, there's a
2 hearing scheduled for Wednesday morning in the
3 Delaware bankruptcy proceedings, and there's also
4 a hearing scheduled here, at the PUC, to address
5 many of the same matters. As a result, it is
6 possible, if not likely, that we will have no
7 greater clarity on the outcome of the bankruptcy
8 proceedings next week than we do now.

9 So, I therefore would like to propose
10 that the Commission cancel the hearing next week,
11 and, in lieu of that hearing, the Company will
12 commit to provide written updates of the status
13 of the bankruptcy proceedings every two weeks, or
14 sooner, upon the occurrence of any material
15 event, if it happens prior to the scheduled
16 two-week update.

17 When there is greater clarity as to
18 outcome of the bankruptcy proceedings, and any
19 related impacts on the Burgess PPA
20 administration, it may make sense to consider
21 interim adjustments to the Burgess-related
22 components of the SCRC rate, that the Commission
23 has approved on a provisional basis.

24 I'm done. And I will now address any

1 questions.

2 CHAIRMAN GOLDNER: Thank you, sir.

3 That was far less than ten. Very helpful.

4 Okay. Most of our questions are
5 directed, Attorney Wiesner, at you, as a
6 follow-up to your opening statement, and then as
7 a follow-up to the bankruptcy filings. Just a
8 moment please.

9 Okay. So, the first question is, you
10 know, what's the benefit to Eversource ratepayers
11 in enforcing the deal? So, Burgess filed to
12 sever, and then Eversource's filing was that
13 they're not allowed to sever. So, I'm trying to
14 understand what the benefit is in the Company's
15 filings, in the Company's bankruptcy filings in
16 that regard?

17 MR. WIESNER: I mean, if I understand
18 the question, I think our goal, as I said in the
19 opening statement, is to continue enforcement and
20 administration of the PPA, that is the means
21 through which the 71.5 million Excess Cumulative
22 Reduction balance can begin to be returned to
23 customers for their benefit.

24 CHAIRMAN GOLDNER: And has the Company

1 done the math on, if the Agreement was severed,
2 and the Burgess went straight to the ISO-New
3 England Market, versus the alternative, which is
4 the Agreement was enforced, which agreement would
5 give ratepayers a lower price, a lower cost?

6 MR. WIESNER: I'm not aware that that
7 analysis has been done. I mean, the suggestion,
8 I think, is that it may be better to not have
9 this contract in force, even if that means that
10 there won't be recoupment against further
11 payments.

12 CHAIRMAN GOLDNER: Yes. What I would
13 say is, it's an interesting analysis, because,
14 currently, the PPA provides a price of about \$145
15 a megawatt-hour, where the current Eversource
16 price, if I'm not wrong, is closer to \$80 a
17 megawatt-hour. So, if ratepayers were getting
18 the \$80 a megawatt-hour, the current Default
19 Service price, as opposed to paying back at a
20 rate of 145, we might find that ratepayers are
21 actually better off to sever the Agreement.

22 So, what I would ask is, for next
23 week's hearing, assuming that we stick with that,
24 that the Company be prepared with witnesses to

1 answer that particular question.

2 MR. WIESNER: But, and just to clarify,
3 when we say "sever", Burgess, as I understand it,
4 is basically seeking to reject the PPA, take
5 control of the Lead Market Participant
6 relationship with the ISO, and go on their merry
7 way without the PPA. And, so, that means that
8 Eversource would no longer be buying any products
9 produced by the plant at the PPA contracted
10 rates. But it would also not have the
11 opportunity to net and recoupment against those
12 payments.

13 CHAIRMAN GOLDNER: Totally understand.
14 And the analysis would be that, in Scenario 1,
15 that the Agreement is not severed, and that
16 Eversource continued to pay at the PPA rate; and
17 Analysis 2, that Eversource customers buy at the
18 market rate, whatever that market rate is, today
19 it's, you know, \$82 a megawatt-hour, I think.
20 And, over some time period, it could be that
21 ratepayers are actually better off, in fact,
22 they're probably better off, with a severed
23 Agreement. So, they're paying \$82, versus 145,
24 over some time period. So, that would be

1 something we would like to see for the next
2 hearing, so just so the witnesses are prepared.

3 MR. WIESNER: I'll take that back.
4 Thank you.

5 CHAIRMAN GOLDNER: Thank you. The
6 follow-up to that would be, on Page 2 of the
7 Change of Venue filing in Delaware, the Company
8 says, on Page 2, that the PPA "protects New
9 Hampshire ratepayers from paying too much for
10 electricity". Can you share what the Company
11 means by that?

12 And I'll give you a chance to find it,
13 if you wish. It's Page 2 of the Change of Venue
14 filing.

15 MR. WIESNER: I think that is just a
16 reference to the opportunity to recoup the Excess
17 Cumulative Reduction through the offset
18 mechanism.

19 CHAIRMAN GOLDNER: Okay. Okay.
20 Because, in the PPA, the ratepayers are paying
21 like \$145 a megawatt-hour, not the Default
22 Service price. So, I just wanted to understand
23 what the Company was trying to point out there.
24 So, thank you for that.

1 And, then, on Page 4 of that same
2 filing, the Change of Venue, it says, and I'll
3 quote: "Prior to the alleged termination, PSNH
4 invoked the dispute resolution procedures in the
5 PPA, which require binding arbitration of the
6 payment dispute, breach, and termination issues
7 in New Hampshire."

8 And, so, my question for you there is,
9 when did this happen, and why wasn't the
10 Commission informed?

11 MR. WIESNER: There was, as I referred
12 to in the opening statement, there was, and I
13 gave you the brief version, but there was an
14 exchange of letters between the companies after
15 the January invoice, related to December
16 production, was made available to Burgess. And,
17 in that exchange, the Company, Eversource, said
18 "if there's a dispute" -- first of all, you know,
19 we believe we were well within our rights to have
20 done the netting that we did. And, if there's a
21 dispute about that, we look to the PPA, and the
22 PPA requires, the first step is a meeting between
23 executives of the companies. And I think that --
24 I don't think we -- some of those communications

1 are, arguably, probably deemed "confidential"
2 between the parties, in connection with their
3 resolution of a dispute to a private contract,
4 which was approved by the Commission, in
5 particular, because of its potential impact on
6 Eversource ratepayers. I don't think we
7 considered at the time that that -- that that
8 exchange of document -- of correspondence should
9 be filed with or brought to the attention of the
10 Commission.

11 CHAIRMAN GOLDNER: In hindsight, would
12 the Company -- did the Company make a mistake?
13 Should the Company have filed? I mean, I suppose
14 you could have made a confidential filing, if you
15 didn't want it to be in the public domain. But,
16 if the SCRC is affected by a bankruptcy
17 proceeding, or negotiations leading up to a
18 bankruptcy, or the bankruptcy has already
19 happened, then, I would have expected that the
20 Company would have filed something.

21 MR. WIESNER: I'll just say that it is
22 not unexpected that Burgess would file
23 bankruptcy, now that the cap suspension has
24 expired. That is something that was well known

1 as a possibility for some time. That is
2 essentially the reason, as best I understand it,
3 why they sought relief from the Legislature, and
4 got it three times, but the Governor only signed
5 it twice.

6 CHAIRMAN GOLDNER: Okay. And, so, the
7 next question is, is around how Burgess is
8 operating today. So, can you tell us, sort of
9 mechanically and financially, how Burgess is
10 selling power into the market, having taken the
11 position with Eversource that the Agreement is
12 severed?

13 MR. WIESNER: Well, my understanding is
14 that nothing is actually changed. That their
15 production is effectively owned by Eversource, as
16 a result of its Lead Market Participant status,
17 and is being sold into the market for the credit
18 of Eversource.

19 So, in terms of, like, on-the-ground
20 operation, I don't believe that there's an actual
21 change. They are seeking to alter that, of
22 course, and that is the primary driver for the
23 Motion to Change the Lead Market Participant. As
24 you probably saw in the objection that we filed

1 to that Motion, that is something that they would
2 only have the right to do if the contract were no
3 longer in force. Our view is that there was no
4 breach, the termination was not effective. If
5 there's a dispute regarding that, it should be
6 addressed through ADR, as the contract provides.

7 And, in any event, if it is to be
8 determined by the Bankruptcy Court, there should
9 be an adversary proceeding, which is essentially
10 litigation in the bankruptcy context, as opposed
11 to just a motion filing.

12 CHAIRMAN GOLDNER: And, so, when
13 Burgess produces power today, they're selling it
14 into the ISO-New England Market, getting the
15 ISO-New England Market rate. And the dispute is
16 between Eversource and Burgess, relative to any
17 additional payments beyond the ISO-New England
18 rate, that Burgess is receiving. Is that right?

19 MR. WIESNER: No. What I'm saying is,
20 the actual mechanics have not changed at all, as
21 I understand it. Meaning, when they produce
22 power, the power production, and whatever value
23 it has in the ISO Market, is credited to
24 Eversource, not to Burgess. Eversource continues

1 to own that generation asset in the eyes of
2 ISO-New England. And, so, the Company is
3 credited for that production. And, then, you
4 know, has the obligation to pay Eversource --
5 excuse me -- pay Burgess at the contract price,
6 but subject to the netting and recoupment
7 mechanisms which are now in effect.

8 CHAIRMAN GOLDNER: Okay. And I noticed
9 also, in that same filing, the Change of Venue
10 filing, on Pages 13 and 14, there is discussion
11 of a "\$5.961 million energy credit", and a net
12 payment to the company, to Burgess that is, of
13 "1.8 million".

14 And, so, I'm trying to understand what
15 those payments were for. Why -- what was the 1.8
16 million payment for, and what was included in the
17 \$6 million, I'll call it "recapture"?

18 MR. WIESNER: So, the mechanism under
19 the PPA is that one-twelfth of the Excess
20 Cumulative Reduction balance as of the end of the
21 preceding operating year, can be set off
22 against -- it should be -- should say "netted and
23 recouped", against payments that would otherwise
24 be made to Burgess for production during the

1 current operating year. And that's basically the
2 5.9 million. That amount, with respect to the
3 January invoice for December production, that
4 amount was "offset", I'll use that term, I think
5 our bankruptcy lawyers would prefer that I use
6 the term "netted", but it just rolls off the
7 tongue, was netted or offset against both the
8 energy payment and the REC and capacity payment,
9 but there was a balance remaining, and that
10 balance was, in fact, paid to Burgess.

11 CHAIRMAN GOLDNER: And that \$1.8
12 million balance that was paid to Burgess, perhaps
13 you could elaborate a little more, what's
14 included in that? Like, how is that -- how was
15 that calculated? Do you --

16 MR. WIESNER: Well, I mean, without
17 getting into the specific numbers, the total
18 payment that would have been done for -- due for
19 December to Burgess comprises the energy payment
20 for the month, capacity, and the quarterly REC
21 payment. And, when you total those three things,
22 it adds up to more than the 5.9 million. And the
23 balance above the 5.9 million is the 1.8,
24 roughly, that was paid to Burgess.

1 CHAIRMAN GOLDNER: Okay. And, so, this
2 gets into sort of the next topic, which is
3 that -- I'll start with the letter dated
4 January 25th, from Eversource's attorney, Michael
5 Perry, of Boston. And, in that letter, Attorney
6 Perry says "Pursuant to Article", and this is, I
7 think, what you were also saying, Attorney
8 Wiesner, but you can correct me if I get this
9 wrong. "Pursuant to Article 10.3 of the PPA,
10 Eversource is entitled to net and recoup the
11 deferred Cumulative Reduction Amount against all
12 amounts owed by Eversource, including, but not
13 limited to, any amounts owed for the New
14 Hampshire Class I Renewable Energy Credits and/or
15 Capacity."

16 But, in our January 19th hearing, Ms.
17 Chen, Transcript Pages 74 and 75, and
18 specifically said the opposite, that, in fact,
19 the REC and capacity payments would not and could
20 not be netted per the PPA.

21 MR. WIESNER: And we addressed, I
22 think, that timing issue in one of the record
23 request responses following the hearing.
24 Effectively, the final decision to net against

1 both sections of the PPA, and, therefore, against
2 capacity and RECs, was made -- was finalized at
3 some time after the hearing, but before the
4 invoice was prepared. So, that is a timing
5 issue.

6 The folks who were here on the morning
7 of January 19th gave testimony according to their
8 best understanding. A decision was made
9 subsequently, I believe, with respect to the
10 RECs, in particular, because of the value of
11 those RECs. And I would say, again, as I
12 suggested in my opening statement, with the goal
13 of maximizing the benefit for customers, by
14 exercising the maximum netting permitted under
15 the PPA, to also withhold payment for some
16 portion of the REC and capacity payments.

17 CHAIRMAN GOLDNER: So, the Company's
18 position changed six days after the Commission
19 hearing? So, in the Commission hearing, the
20 Company's position was "REC and capacity payments
21 cannot be netted", and then six days later the
22 Company's position changed to they "could be
23 netted", but the Commission wasn't informed. Is
24 that a fair summary?

1 MR. WIESNER: The Commission was
2 informed through the record request response,
3 which referred to the 10.3 netting, as well as
4 the 6.1.4(c) netting.

5 CHAIRMAN GOLDNER: We'll have to look
6 at that at break. I did not -- that was not my
7 understanding of the record request, but we can
8 look at that at break.

9 All right. So, going back to the
10 Motion to Change Venue from the Delaware
11 Bankruptcy Court, if we go to Points 92 and 93,
12 I'll just read them into the record. It says --
13 92 says "Moreover, the New Hampshire PUC
14 regulates PSNH and the PPA pursuant to which PSNH
15 purchases the products of the Facility, and is
16 actively exercising that jurisdiction in
17 connection with the recent PSNH petition to
18 adjust its SCRC." And, then, it says
19 "Accordingly, the New Hampshire PUC is likely to
20 be an active participant in the Debtors'
21 bankruptcy proceedings."

22 Then, in 93, it says "Accordingly, this
23 factor weighs strongly in favor of transferring
24 the venue of these bankruptcy proceedings to the

1 New Hampshire Bankruptcy Court."

2 So, I would just add, that, given the
3 Commission's role as arbiter and as an
4 adjudicative body, we don't understand why the
5 Company would take the position that the
6 Commission would "be an active participant" in a
7 bankruptcy proceeding in Delaware, involving a
8 merchant power plant as a Debtor movant, and
9 Eversource as a creditor respondent, in a matter
10 that has an impact on active dockets.

11 So, I'd like to give Attorney Wiesner a
12 chance to respond to that filing.

13 MR. WIESNER: Well, I think, you know,
14 that probably should be read as "the New
15 Hampshire PUC is likely to have a strong interest
16 in the Debtors' bankruptcy proceedings", as
17 opposed to being an "active participant".

18 The outside counsel who worked on this,
19 I think, may not have coordinated closely with
20 the folks who do state regulatory work for the
21 Company.

22 CHAIRMAN GOLDNER: Would Eversource be
23 filing a correction to this assertion with
24 Delaware, because that's a significant

1 difference?

2 MR. WIESNER: I will take that back as
3 well. I think that's -- I believe that would be
4 an appropriate thing to do. There are many good
5 reasons why the venue should be transferred to
6 New Hampshire. But I would hate to think that
7 the Court would look at it and say "Well, if the
8 PUC is going to participate, then we need to have
9 it up there."

10 CHAIRMAN GOLDNER: Thank you. That is
11 agreeable.

12 Let's see. Let's turn to some -- the
13 confusion, at least that I have, relative to that
14 January '24 -- January 2024 payment, I'm looking
15 at Docket 22-039, dated 01-01-2023, Attachment
16 MBP-1, Page 6 of 7. It's that spreadsheet that
17 Eversource always provides. And it shows that
18 Eversource in the -- what I'll call "year 2023",
19 which extends through January 2024, it shows that
20 quarterly REC payment, and it shows that the
21 Company is collecting that quarterly REC payment
22 from ratepayers. But the Company's position just
23 taken is that the Company is withholding that,
24 and thus ratepayers, I think, are caught in

1 between.

2 So, I'd like to give you an opportunity
3 to talk about that quarterly REC payment,
4 January 2024, on last year's SCRC collection.
5 So, you collected it, Eversource collected it,
6 right? And, then -- and now, it's being
7 withheld. So, we're just trying to understand
8 that transaction.

9 MR. WIESNER: Well, I'm not clear on
10 what time period we're looking at?

11 CHAIRMAN GOLDNER: So, we're looking at
12 the year beginning February '23 through January
13 '24. So, it's last year. So, you had an SCRC
14 rate that was set by the Commission one year ago,
15 January of 2023, for the upcoming year. And the
16 Company had a set SCRC rate that collected that
17 amount.

18 MR. WIESNER: I mean, that is an
19 estimate. And, as, you know, circumstances
20 showed, that that estimate turned out not to be
21 correct, with respect to that January REC
22 payment, because of the decision to net against
23 those payments, as permitted by the PPA.

24 CHAIRMAN GOLDNER: When was the

1 bankruptcy filed?

2 MR. WIESNER: When was the bankruptcy
3 filed?

4 CHAIRMAN GOLDNER: By Burgess?

5 MR. WIESNER: February 9th, this past
6 Friday.

7 CHAIRMAN GOLDNER: So, how would the
8 Company not make a payment in January, if the
9 bankruptcy filing wasn't until February?

10 MR. WIESNER: Because the PPA permits
11 that netting mechanism to be applied to REC
12 payments and capacity payments, as well as
13 energy.

14 CHAIRMAN GOLDNER: But not until
15 February 1st?

16 MR. WIESNER: No, no. That's -- no,
17 we're talking about the REC payments, the invoice
18 that covers the fourth quarter of 2023 REC
19 Payments is payable in January. But that is
20 after the cap suspension expired at the end of
21 November, so that the netting mechanisms were
22 implementable. And, so, as I had mentioned in
23 the opening statement, the Company took the
24 opportunity to net against both of those other

1 products, as well as energy, with respect, you
2 know, at the first opportunity they had, which
3 was for the January invoice relating to December
4 energy production and fourth quarter REC
5 production.

6 CHAIRMAN GOLDNER: Okay. So, maybe you
7 can -- we'll probably come back to this topic
8 here in a little bit.

9 But can you -- can you walk us through
10 the implications of the Berlin plant being
11 successful in its seeking bankruptcy relief, and
12 being able to walk away from the PPA? Meaning
13 that, if the Berlin plant is successful in
14 Delaware, should Eversource continue to collect
15 the Part 2 and Chapter 340 costs, if they're
16 successful?

17 MR. WIESNER: Well, to the extent that
18 there are -- I mean, if the Company is no longer
19 buying power from Burgess pursuant to the PPA at
20 an above-market cost, or RECs or capacity, then
21 the portions of the SCRC that address Burgess
22 costs would be on a glide path to being zeroed
23 out. But there would be cleanup, so to speak.
24 There would be reconciliations that would need to

1 be made, again, estimates versus actuals, that
2 would not be implemented immediately, I would
3 think.

4 So, in other words, it would take some
5 time, and I don't know how long, sitting here, to
6 work itself through the system. But it would not
7 be, I mean, in three years from now, we won't be
8 talking about this anymore, because there
9 wouldn't be any Burgess contract. I mean,
10 similar to Lempster, you know, Lempster was under
11 this, was under SCRC as well, but that contract
12 ended. And, you know, any impacts of that are
13 going to walk their way through the system, and
14 then be done.

15 CHAIRMAN GOLDNER: Okay. And should
16 the SCRC rates, the Part 2 and Chapter 340 rates,
17 relative to Burgess, be suspended, pending
18 further developments in the litigation?

19 MR. WIESNER: I mean, our position
20 would be "no". But, you know, there is, as I
21 mentioned in the opening statement, there is
22 currently great uncertainty about what the future
23 holds. And, if the PPA is going to be terminated
24 or rejected by the Bankruptcy Court, and Burgess

1 is free and clear, then that will change things
2 dramatically. I don't believe we have analyzed
3 that scenario internally, as to what that might
4 mean for any interim adjustments to the SCRC. If
5 there are no interim adjustments, then the rate
6 would continue in effect, and would be reconciled
7 ultimately next year.

8 You know, that would, obviously, I
9 think, be a very material development that might
10 warrant a relook at those components of the SCRC
11 on an interim basis.

12 CHAIRMAN GOLDNER: And I think the
13 "cleanup" that you're referring to is primarily
14 the carryforward, as I recall, I don't have the
15 numbers in front of me, but there was a \$20
16 million plus carryforward estimated in the
17 current SCRC rate that's being charged right now,
18 from last year. So, I think what you're
19 suggesting is the carryforward would -- the
20 Company would want to collect that carryforward,
21 and that would be the "cleanup" that you're
22 referring to?

23 MR. WIESNER: That, and, I mean, we are
24 already into the new year now. Excuse me.

1 Because, as I mentioned earlier, you know, as we
2 speak, the energy production from the plant is
3 being credited to Eversource, as best as I
4 understand it, and subject to the PPA.

5 What happens in bankruptcy, if there's
6 a settlement that would end the Company's
7 involvement with the PPA, that would be a
8 material event that would need to be accounted
9 for at some point through the SCRC.

10 So, I think the "cleanup" that I
11 referred to would certainly cover the
12 carryforward that you mention. There may be some
13 other aspects to it. I can't speak to that in
14 detail as I sit here.

15 CHAIRMAN GOLDNER: Okay. Okay. And,
16 then, I have this one question, and then I'll --
17 last question for now, and then I'll turn it over
18 to Commissioner Simpson and Commissioner
19 Chattopadhyay, and then we'll take a break.

20 So, the Commission had asked for a full
21 accounting of the derivation of this \$71 million
22 CRF. And we got filings that were, I'm going to
23 say, nonresponsive to that request.

24 I just want to make clear to the

1 Company what we're looking for. So, going back
2 to day zero, when the 171 million was
3 accumulated, we need to see the accounting
4 year-by-year that gets us to the 171 million,
5 offset by the 100 that was forgiven, to make sure
6 that our starting point in this calculation is
7 correct.

8 And, so, that would be a record request
9 that we'll make in this, in this hearing, to make
10 sure that we have a full accounting, and make
11 sure that everyone, all the parties, are aligned
12 with the exact amount of the -- of the amount
13 owed to New Hampshire ratepayers.

14 MR. WIESNER: I mean, we did attempt to
15 address that in the record request that was
16 provided. If more detail is necessary, we can
17 take another crack at it.

18 CHAIRMAN GOLDNER: Yes. Let me try to
19 describe it.

20 So, the carryforward started -- it
21 started in 2012? 2014? Do you remember what
22 year the accounting started, the plant went live,
23 and the carryforward began? I don't remember
24 which year. It was 2012 or 2014.

1 MR. WIESNER: I'd have to check.

2 CHAIRMAN GOLDNER: It was an even
3 number, I know that.

4 So, yes. So, whatever year the plant
5 started, just marching forward in time, the
6 carryforward each year, and the math that goes
7 into the carryforward. And I just want to make
8 sure all the parties have the math, so that they
9 can be comfortable that we are comfortable that
10 we're talking about the right starting point as
11 we move forward. So, just to have the baseline.

12 Okay. And we'll make that -- we'll
13 make that a record request.

14 So, I'll pause my questions there. And
15 I'll move to Commissioner Simpson.

16 CMSR. SIMPSON: Just ask one now, and
17 then wait to hear from the other participants
18 here today.

19 With respect to the bankruptcy
20 proceeding, what status does Eversource have as a
21 creditor?

22 I saw in some of the filings it's
23 listed as an "unsecured creditor". And I wanted
24 to see if the Company intends to pursue a

1 different position?

2 MR. WIESNER: No, I believe that's
3 correct. I mean, there's no specific security
4 for the PPA. There's the netting and recoupment
5 mechanism, there's a Right of First Refusal, if
6 Burgess seeks to sell the plant. And, then,
7 there's the purchase option, which is a separate
8 agreement, which Burgess has also sought to
9 reject.

10 Those are contractual rights. They're
11 not "secured", in the sense that there's a
12 mortgage or security interest or some form of
13 financial security, letter of credit or something
14 like that.

15 CMSR. SIMPSON: Okay. Thank you.
16 That's all I have right now. And I may have
17 other questions, after we hear from the other
18 participants. Thanks.

19 CHAIRMAN GOLDNER: Okay. Commissioner
20 Chattopadhyay.

21 CMSR. CHATTOPADHYAY: So, this is
22 intended to understand what's going on. And, so,
23 I will be using nontechnical terms, or the way I
24 describe it.

1 So, what I want to understand is, if
2 what Burgess is trying to do is successful, I
3 think, as I understand it, the money that you
4 receive for the production, Eversource won't be
5 receiving it, they will be receiving it directly?

6 MR. WIESNER: If they reject -- if the
7 PPA is rejected, and the Burgess affiliate is
8 designated as the Lead Market Participant in the
9 ISO, then, yes. Burgess would be credited for
10 the value of that energy production in the ISO
11 Market Settlement System, and the Company would
12 be out of that loop.

13 CMSR. CHATTOPADHYAY: So, what they are
14 trying to do is, the money you're receiving right
15 now, and you're holding onto it and not, you
16 know, counting it against the CRF, they want to
17 take that ability away, and they want to be paid?

18 MR. WIESNER: They want to be --

19 CMSR. CHATTOPADHYAY: Paid directly.

20 MR. WIESNER: -- free and clear of the
21 PPA, including the netting and recoupment
22 mechanism, --

23 CMSR. CHATTOPADHYAY: Okay.

24 MR. WIESNER: -- now that they're in

1 effect.

2 CMSR. CHATTOPADHYAY: Yes. I think
3 what you're saying is, how I am visualizing it, I
4 was just trying to get it in terms of numbers or
5 directionally dollarwise.

6 The other question I have is, in
7 getting to the 71.5, or the 71 million CRF, now
8 that I understand that the over-market costs that
9 appears to be that you want to not -- you want to
10 hold onto, includes RECs and capacity markets.
11 It just -- it would be helpful for me to
12 understand whether the \$71 million CRF accounts
13 for over-market costs that are related to RECs
14 and capacity market as well?

15 MR. WIESNER: Excuse me, no. The
16 Excess Cumulative Reduction is set up -- well, I
17 should say the Cumulative Reduction is set up to
18 be a comparison between the price that's paid for
19 energy under the PPA and the value of the energy,
20 and potentially related ISO market products, such
21 as ancillary services or whatever, to the
22 Company.

23 So, it's measuring that delta. But it
24 does not include the potentially above-market

1 costs of RECs or capacity.

2 CMSR. CHATTOPADHYAY: So, just -- I was
3 trying to get a confirmation. Okay. So, that is
4 purely based on the energy prices.

5 And, now, in terms of dealing with the
6 CRF, you are saying this happened five days after
7 the previous hearing day, that you've decided to
8 use both -- sorry -- use not only the energy
9 portion, but also REC and the capacity market
10 portion to eat into the CRF, right?

11 MR. WIESNER: Yes.

12 CMSR. CHATTOPADHYAY: Okay.

13 MR. WIESNER: And, in a record request
14 response, that I think was Record Request
15 Number 004, that was -- the response that was
16 provided following the January 19th hearing, we
17 did flag the fact that the "set-off", as it's
18 referred to there, was expanded to include both
19 capacity and REC payments, in addition to energy,
20 because of the decision that had very recently
21 been made to invoke Section 10.3, as well as
22 Section 6.1.4(c) of the PPA.

23 CMSR. CHATTOPADHYAY: And probably the
24 answer is already there, but that new "reality",

1 or approach, that's going to impact how the CRF
2 fund changes over time, right?

3 MR. WIESNER: If the PPA remains in
4 effect, and the plant continues to operate, yes.
5 And one of the record requests --

6 CMSR. CHATTOPADHYAY: Can you remind me
7 which one was it? I just want to know that.

8 MR. WIESNER: Yes. So, this is Record
9 Request 004. And that is where there are two
10 different versions of the --

11 CMSR. CHATTOPADHYAY: Thank you.

12 MR. WIESNER: -- hypothetical Excess
13 Cumulative Reduction balance, netting and
14 crediting again. This is also showing the
15 ongoing comparison between contract prices and
16 market prices, which are based on forward price
17 forecasts as of the time when the response was
18 prepared.

19 CMSR. CHATTOPADHYAY: Okay.

20 MR. WIESNER: But it does give you an
21 indication of how that would work, and there is a
22 difference.

23 CMSR. CHATTOPADHYAY: And I'm not
24 looking at it right away. But would it dwindle

1 the amount quicker?

2 MR. WIESNER: It would.

3 CMSR. CHATTOPADHYAY: Okay. Thank you.
4 That's all I have.

5 CHAIRMAN GOLDNER: So, I just want to
6 clear up something before, that we were talking
7 about before, Attorney Wiesner, just to make sure
8 we're on the same page.

9 So, the hearing with the Commission was
10 on the 19th of January. And the letter that was
11 written from Eversource, changing the Company's
12 position on RECs and capacity, was on the 22nd.
13 So, there must have been some -- yes, the first
14 communication with the Company with Burgess. So,
15 the Company's position changed over the weekend.
16 And, so, I'm just trying to get an understanding
17 of how the Commission could have gotten the wrong
18 information only three days before the Company
19 had a change of position?

20 MR. WIESNER: I'm not sure I know all
21 the details as I sit here. The folks who were
22 making the decision to go that route is a
23 separate group of people than those who were here
24 on Friday morning, the 19th.

1 CHAIRMAN GOLDNER: So, I would just
2 suggest, in future hearings, we need to have the
3 right people in the hearing room that know what's
4 going on. That's a problem for the Commission.

5 MR. WIESNER: I will also say that, you
6 know, a decision is -- there's one -- one view of
7 the world is a decision is made when it's final
8 and it's implemented, and up to that point it
9 can't be changed. And I think there would have
10 been a strong reluctance to publicly announce a
11 new strategy regarding the scope of the netting
12 in a public hearing.

13 CHAIRMAN GOLDNER: We have
14 confidential --

15 MR. WIESNER: More as a general
16 comment.

17 CHAIRMAN GOLDNER: Yes. We have
18 confidential opportunities in the Commission as
19 well. And I would expect the Commission to be
20 informed by Eversource of their position. And
21 that was a disappointing development.

22 So, let me do this. Let me see if the
23 Department or the OCA has anything they would
24 like to add, before we take a break for the

1 Commissioners to confer?

2 MR. CROUSE: Looking to go first, I
3 suppose. The OCA would benefit from a break to
4 better develop the questions that we would like
5 to ask. So, nothing to add at this moment.

6 Thank you.

7 CHAIRMAN GOLDNER: Okay. Very good.
8 Mr. Young?

9 MR. YOUNG: The Department would also
10 perhaps benefit from a break.

11 I would just like to maybe address one
12 clarifying point that I think Commissioner
13 Chattopadhyay had mentioned.

14 The amount with the new, I guess, REC
15 set-off would dwindle the 70 million amount, I
16 guess, in a way. But that would also increase
17 the over-collection at the end, I think was just
18 a point of clarification, is my view.

19 Based on what was approved in the
20 order.

21 CMSR. CHATTOPADHYAY: And you said at
22 the end, and it would also increase, okay, --

23 CMSR. SIMPSON: Over-collection.

24 MR. YOUNG: Over-collection, correct.

1 CMSR. CHATTOPADHYAY: Okay. Okay.

2 Thank you.

3 CHAIRMAN GOLDNER: All right. I'll ask
4 the question of the OCA and the DOE, how much of
5 a break would you like to have to sort through
6 your questions?

7 MR. YOUNG: Ten minutes would be okay
8 for the Department.

9 CHAIRMAN GOLDNER: Okay.

10 MR. CROUSE: The OCA is also fine with
11 five or ten minutes.

12 CHAIRMAN GOLDNER: Okay. Let's resume
13 at five after.

14 *(Recess taken at 1:52 p.m., and the*
15 *hearing reconvened at 2:10 p.m.)*

16 CHAIRMAN GOLDNER: Okay. One or two
17 more questions for Attorney Wiesner, and then
18 we'll turn to the OCA.

19 So, the first question for you,
20 Attorney Wiesner, is that the Commissioners would
21 like to know when this new interpretation was
22 taken, I'm talking about the unilateral change in
23 position on RECs and capacity, and on whose
24 authority?

1 MR. WIESNER: I'm not sure I understand
2 the question.

3 CHAIRMAN GOLDNER: Sure. So, on the
4 19th, we had a hearing here at the Commission.
5 The position taken from the Company, to the
6 Commission, was that the RECs and capacity were
7 not decremented to Burgess. On the next, the
8 following Monday, the Company's position had
9 changed. And, so, we'd like to understand what
10 happened there, and on whose authority was that
11 decision taken?

12 Because the witnesses we had here told
13 us the opposite of what the Company's position
14 was on Monday.

15 MR. WIESNER: I mean, I believe it's
16 the people responsible for direct administration
17 of the Burgess PPA who were the primary drivers
18 of that decision.

19 And I'm -- I mean, forgive me for
20 saying this, but I'm not sure I fully understand
21 the relevance of that. A decision was made to
22 expand the netting, in the interest of providing
23 greater and more immediate benefit to the
24 customers. The people who were testifying that

1 morning were not directly involved in the
2 administration of the PPA.

3 And I think, you know, as I mentioned
4 in my opening statement, the primary role for the
5 Commission in the SCRC docket is to determine
6 whether the Company's estimates are reasonable.

7 And, understanding that this is a new
8 wrinkle, and is different from what you had seen
9 historically, because there was no opportunity
10 for the Company to exercise the netting mechanism
11 against payments made to Burgess. So, the only
12 issue was what payments were made, versus what
13 was the market price, that was the over-market
14 portion, which then ran through the SCRC. Now,
15 we have this new approach.

16 And I -- I would say that the Company
17 made a special effort to seek to obtain greater
18 benefit for its customers, as a result of the
19 expanded netting that was implemented with the
20 January invoice.

21 CHAIRMAN GOLDNER: Well, I would say
22 the PPA either said one thing or it said another,
23 and the Company took a position on a Friday, and
24 then a different position on a Monday. So,

1 there's that.

2 I would say, secondly, that we
3 obviously had the wrong witnesses at hearing,
4 because they couldn't testify as to the Company's
5 actual position. So, I would ask, at next
6 hearing, for the Company to provide the right
7 witnesses, that understand the transaction, when
8 it happened, how it happened, for what reasons it
9 happened, because the Commission wants to hear
10 about that.

11 And, then, finally, we'll need to
12 understand at the next hearing what it means for
13 the rates. Because, obviously, the SCRC has
14 changed, and, Attorney Wiesner, your point is
15 that it's favorable to ratepayers, but
16 nevertheless it's changed. So, we would need
17 updated SCRC rates, updated schedules, to
18 understand what that -- what the new transaction
19 is, and so that we can make adjustments, an
20 appropriate adjustment to the rates.

21 Commissioner Chattopadhyay, did you
22 have a follow-on question for Attorney Wiesner?

23 CMSR. CHATTOPADHYAY: I think you
24 covered that, the last piece, that was in line --

1 in line with what I wanted to understand.

2 So, clearly, the rates that went into
3 effect, they didn't account for the adjustment
4 for the RECs and the capacity market, right? I'm
5 just trying to understand.

6 MR. WIESNER: Yes. That is correct.

7 CMSR. CHATTOPADHYAY: And, now, the
8 position is that those two things should be also
9 in the mix, and therefore the rates would have
10 been different, if you had known that beforehand?

11 MR. WIESNER: That's correct. And I
12 think we indicated that in one of the record
13 request responses, and offered to provide updated
14 schedules, if the Company -- if the Commission so
15 directed, rather.

16 I think, you know, since then, we now
17 have the bankruptcy, which has, you know, raised
18 greater uncertainty about the future of the PPA
19 and how it will be administered. Again, as I
20 said in my opening statement, our current
21 position is we're going to seek to enforce and
22 administer the PPA according to its terms,
23 notwithstanding the bankruptcy, but, of course,
24 subject to the bankruptcy, object to any attempt

1 by the Burgess companies to reject the PPA and
2 the Option Agreement.

3 But, as I also noted, there are
4 currently settlement negotiations ongoing. I am
5 not personally involved in them. They may be
6 taking place as we sit here right now.

7 CMSR. CHATTOPADHYAY: Yes. I think I
8 understand that, you know, things are in a flux.
9 But it would be helpful, and, if that record
10 request already addresses it, I'd be happy to
11 take a look. I'm just trying to understand what
12 it means for the Chapter 340, so, you know, the
13 rate, that adjustment, how does that impact the
14 rates?

15 MR. WIESNER: Right.

16 CMSR. CHATTOPADHYAY: So, and if that
17 is covered in the record request, would be good
18 to know where. And otherwise, that's what
19 something is driving my, you know, inquiry here.

20 MR. WIESNER: Just to be clear, the
21 record request refers to "updated schedules" for
22 the Chapter 340 adder that would reflect the
23 broader netting mechanisms, if you will. But
24 those were not provided with the record request.

1 CMSR. CHATTOPADHYAY: Okay. So -- but
2 that's something we would be interested in.

3 So, thanks.

4 CHAIRMAN GOLDNER: So, I'll just --
5 Attorney Wiesner, I'm just going to respond
6 directly to your point.

7 So, you're referring, I believe, to
8 confidential Attachment RR-03. So, this is
9 confidential for the court reporter.

10 Well, let me ask Attorney Wiesner this.
11 So, in confidential Attachment RR-03, is there
12 anything in there that you would be uncomfortable
13 sharing?

14 MR. WIESNER: I mean, the information
15 that is shown as shaded in the confidential
16 version is something that should not be publicly
17 disclosed.

18 CHAIRMAN GOLDNER: Okay. So, what I'll
19 read into the record is not -- is not
20 confidential, and the agreement, Attorney
21 Wiesner, you'll stop me if I hit something
22 confidential.

23 So, I'm going to start reading the
24 paragraph with the word "Following", "Following a

1 further review". I'll just let you catch up, to
2 make sure I'm not reading something in that's --

3 MR. WIESNER: Right. And none of the
4 text is confidential.

5 CHAIRMAN GOLDNER: Okay.

6 MR. WIESNER: It's only certain of the
7 numbers that are included in the schedule.

8 CHAIRMAN GOLDNER: Okay. Perfect. So,
9 I'm just going to read into the record what RR-03
10 says, and why I'm encouraging the Company to
11 strive for improved transparency. It says
12 "Following a further review of the Burgess
13 Amended and Restated Power Purchase Agreement
14 provisions, the Company has very recently decided
15 to set-off against payments for Renewable Energy
16 Certificates, which were received within the last
17 week and after the SCRC filing, in addition to
18 Capacity and Energy Payments. That additional
19 set-off will be implemented under PPA Section
20 10.3 of Article 10 Billing and Payment, when
21 other components on the Burgess energy" -- "on
22 the Burgess invoice are insufficient to cover the
23 amounts owed to the Company. The schedules
24 provided with the January 8th updated filing do

1 not account for those additional set-offs. The
2 Company is prepared to update those schedules and
3 submit an updated filing, if so directed by the
4 Commission, prior to the effective date of the
5 SCRC rate adjustment."

6 So, that is I think what you're
7 referring to is the heads up to the Commission.
8 I would say, I'm looking to the OCA and the DOE,
9 it may have been perfectly clear to you, but it
10 wasn't clear to me when I read that, that that
11 was what that was telling us. So, you can feel
12 free to comment or not comment on that over time.

13 But I struggled with the clarity and
14 the transparency of that disclosure in Record
15 Request Number 003.

16 MR. WIESNER: And I'll just say, a lot
17 of this is based on timing. And it would have
18 been possible to provide updated schedules to the
19 Commission prior to February 1st, and that's what
20 this, the language that you quoted, says. I
21 think it would be have been difficult for the
22 Commission to presumably have another hearing on
23 that updated information prior to February 1st.

24 Now, to some extent, that issue was

1 resolved by virtue of approving these rate
2 components on a provisional basis, with the
3 opportunity to take another look at them, you
4 know, through subsequent hearings.

5 CHAIRMAN GOLDNER: Okay. Okay, thank
6 you.

7 MR. WIESNER: And, again, that is just
8 related to the expanded netting that was
9 implemented by the Company. Now, we have a
10 bankruptcy, and that creates its own separate
11 uncertainties.

12 CHAIRMAN GOLDNER: Okay. Thank you,
13 Attorney Wiesner.

14 We'll turn now to the Office of the
15 Consumer Advocate, and Attorney Crouse.

16 MR. CROUSE: Thank you, Commissioners.
17 I have a couple questions for Attorney Wiesner,
18 and then I'll turn it over to my co-counsel,
19 Attorney Fossum.

20 Attorney Wiesner, it's been
21 characterized by the Social Media Manager of
22 Eversource, William Hinkle, through New Hampshire
23 Public Radio, In-Depth New Hampshire, WMUR
24 Channel 9 News, that Eversource said it's

1 "pursuing mediation to get the \$71 million in
2 over-market prices paid Burgess for their energy
3 over the last several years, with all of those
4 collections going directly to customers."

5 So, the \$71 million question is, what
6 assurances do customers have that these
7 mediations are going to resolve in them seeing
8 that refund?

9 MR. WIESNER: I mean, the ADR
10 provisions in the PPA, it's the Company's
11 position that those should be the means of
12 resolving any dispute with the Burgess companies
13 regarding the scope of the netting and the
14 payment to which they are due.

15 That is -- I can't tell you that that
16 is progressing currently, because instead we have
17 a bankruptcy, and the Burgess companies are
18 seeking to reject the PPA. That they claim that
19 the Company's alleged breach has justified them
20 in terminating the PPA prior to them filing
21 bankruptcy. But they are also seeking to reject
22 it as an executory contract under the Bankruptcy
23 Code as burdensome to the bankruptcy estate.

24 So, I am not -- this may be resolved

1 outside of a mediation or arbitration scenario,
2 but that is one of the many things that's up in
3 the air, given the recent bankruptcy filing.

4 MR. CROUSE: Thank you. With respect
5 to the bankruptcy proceeding at this time, has it
6 been made clear what assets or debts have been
7 disclosed, such that, with the securitized
8 lenders, who are probably in line before the
9 uncredit -- or, unsecured position that
10 Eversource has, what refund or benefit could be
11 passed through to customers with outside of
12 mediation?

13 MR. WIESNER: I would be very surprised
14 if there were any amount, I'm speaking somewhat
15 out of school, but I have, I think, reason to
16 believe that, if there were a liquidation, for
17 example, that there would not be any additional
18 proceeds of any sale of the plant to provide any
19 value to unsecured creditors, such as the
20 Company, and, ultimately, its customers, through
21 the bankruptcy proceedings.

22 MR. CROUSE: Thank you.

23 To address a question raised by
24 Chairman Goldner earlier, I would differentially

1 offer to the Bench a clarification comment that,
2 while the PUC may not be a present participant in
3 this bankruptcy proceeding, when PSNH was going
4 through its bankruptcy, the PUC, the Department,
5 and the OCA were all parties at that time. And,
6 so, the opportunity to participate is likely
7 here, even though the circumstances aren't
8 identical. That's something that the OCA is
9 internally deliberating on, whether we should be
10 intervening in that matter.

11 So, I would just offer that as a
12 clarification point, and turn the questions over
13 to Attorney Fossum.

14 MR. FOSSUM: Thank you. I'm not sure I
15 had any.

16 I just wanted to pick up on one
17 question about the potential available assets.
18 And you had mentioned, if there was a
19 liquidation, there might not be anything
20 available. Since they have only applied for a
21 Chapter 11 reorganization so far, have -- do you
22 have any information or knowledge, I didn't see
23 anything that was filed, but do you have any
24 information or knowledge about what they have, as

1 far as assets and liabilities as a going concern,
2 versus what they might have as a liquidation?

3 MR. WIESNER: I have not personally
4 reviewed the bankruptcy schedules in any
5 scenario. And, certainly, it is their -- as I
6 best understand it, it is their proposal to
7 continue to operate the plant, perhaps seek a
8 buyer for the plant, but they want to be able to
9 reject the PPA before continuing to operate it
10 themselves, or selling it to some third party.

11 And, in that scenario, it's not clear
12 whether there would be some type of dividend
13 available to pay unsecured creditors, such as the
14 Company, for whatever damages it may be able to
15 assert based on a breach of contract.

16 MR. FOSSUM: I actually have a lot of
17 questions about the bankruptcy itself, but I
18 don't know that here and now is the right time
19 for those questions, I guess. I'll finish with
20 this last question.

21 As you had said in your opening, and
22 correct me if I misremember or misunderstand,
23 that it's currently the Company's intention to
24 enforce, basically, all of the provisions of the

1 contract, the ADR, the offsets, the Right of
2 First Refusal, all of those provisions. Are
3 those options still -- are they legitimately on
4 the table and being discussed, or is it just
5 that's the Company's opening position?

6 MR. WIESNER: I mean, in terms of
7 objecting to the Debtors' proposal, is to reject
8 the PPA and the Option Agreement, and to take
9 over the ISO responsibility as the Lead Market
10 Participant, we are objecting to that, and we are
11 doing so on the basis that it's inconsistent with
12 the PPA, and that the PPA is still in effect, and
13 that the Company is seeking to enforce and
14 continue to administer that PPA, you know,
15 largely for the benefit of its customers, with
16 respect to the netting mechanism.

17 But there are settlement negotiations
18 ongoing. And it is certainly unclear at this
19 point whether any such settlement discussions
20 will be successful or what the outcome of them
21 might be.

22 MR. FOSSUM: Okay. Yes, I suppose one
23 question I have, and I will not ask you to answer
24 it, but I will let you know that it's something

1 we're thinking about, is that there is that
2 Option Agreement, and would be curious to know
3 whether the Company might ever actually consider
4 exercising that Agreement and actually purchasing
5 the plant?

6 Again, I'm not asking you to answer
7 that today. But I just want to let you know
8 that's something that we would be watching.

9 MR. WIESNER: Thank you for not asking
10 it.

11 CHAIRMAN GOLDNER: Thank you. We can
12 turn now to Attorney Young?

13 MR. YOUNG: The Department, we don't
14 have any questions for Mr. Wiesner today, I think
15 maybe just some remarks.

16 The Department does understand that the
17 SCRC rates are currently set at a level, was
18 based on certain estimates, which have now
19 changed. We're not certain at this moment
20 whether it's necessary to adjust these rates to
21 accommodate those changes, especially in light of
22 this bankruptcy.

23 I think, in regards to Mr. Wiesner's
24 proposal about next week's hearing, it may allow

1 for more developments in the bankruptcy hearing
2 to come to light, and would also allow for the
3 DOE and the OCA to exchange written DRs to the
4 Company's witnesses on some of these issues,
5 which might be helpful.

6 And I think I would just -- I would
7 also maybe mention that the DOE has talked to
8 legal counsel about intervening in the bankruptcy
9 proceeding as well.

10 CHAIRMAN GOLDNER: Okay. Thank you.

11 So, a couple of follow-ups for Attorney
12 Wiesner.

13 Is the PPA transferable? In other
14 words, if Burgess/Berlin sell to some other
15 entity, is the PPA transferable or is it
16 terminated upon sale?

17 MR. WIESNER: I'd have to check the
18 provisions. I don't think that is their
19 proposal. I think that they, you know, they have
20 characterized the PPA as an "unreasonable burden"
21 on the bankruptcy estate, and that it would
22 prevent them from successfully reorganizing, and
23 I think that's the motivation for them to seek to
24 reject it.

1 You know, of course, their position is
2 that it was terminated prior to their filing; we
3 dispute that.

4 But, even if it's not deemed to be in
5 breach, the Bankruptcy Code does, you know,
6 provide an opportunity, under many circumstances,
7 for debtors to reject executory contracts that
8 results in a damages claim for the counterparty
9 whose contract has been rejected, as best I
10 understand it. I'm not clear what that would be
11 or how that would be quantified, or, you know, as
12 indicated in my responses to Attorney Crouse,
13 whether there would be any, you know, value left,
14 after the secured creditors have been accounted
15 for.

16 CHAIRMAN GOLDNER: And I guess the
17 follow-up to that would be, is there -- is the
18 Company pursuing or does the Company plan to
19 pursue a kind of structured settlement, where the
20 Company would recover the \$71 million that it's
21 owed, and the Agreement is severed?

22 That seems like it could be -- that
23 sounds like it could be an option.

24 MR. WIESNER: Well, as I noted, there

1 are settlement negotiations ongoing. I'm not
2 personally involved with them. The folks who are
3 are probably personally engaged in them as we
4 speak, because I think there's some interest in
5 exploring a settlement, even prior to the
6 Bankruptcy Court hearing scheduled next week.
7 So, there may be some, you know, developments
8 that materialize in very short order.

9 But I certainly do not want to
10 speculate on what those terms might be, or when
11 any final settlement might come together. We
12 just don't know at this point.

13 CHAIRMAN GOLDNER: Okay.

14 So, I think, do my fellow Commissioners
15 have any additional questions for any of the
16 parties?

17 *[Cmsr. Simpson and Cmsr. Chattopadhyay*
18 *indicating in the negative.]*

19 CHAIRMAN GOLDNER: So, I think the plan
20 from here is to move forward with the hearing
21 next week. And we may have many continued
22 hearings in this docket, given the magnitude of
23 the issues and the importance of this particular
24 item. And, so, we will do that.

1 Attorney Wiesner, we would request is
2 that we have sort of, I'll say, the right
3 witnesses here. And we wanted to have this
4 hearing today to give you a favor for the kinds
5 of things that we're interested in, and to use
6 your judgment to determine who the right folks
7 are to have at the scheduled hearing next week.

8 And, depending on the timeframe in
9 which it takes to resolve the bankruptcy issue,
10 we may have multiple additional hearings, or
11 February 21st, I guess, could be the last one,
12 depending on the timing of the resolution of the
13 bankruptcy proceedings.

14 So, I'll just ask at this point if
15 there's anything anyone else would like to add,
16 before the hearing next week?

17 I assume there will be witnesses,
18 obviously, there will be witnesses from
19 Eversource. Will the OCA or the DOE be providing
20 any witnesses for that session?

21 MR. CROUSE: The OCA is not planning on
22 providing witnesses. But we will reach out, if
23 we make a determination otherwise.

24 CHAIRMAN GOLDNER: Okay. Thank you.

1 Attorney Young?

2 MR. YOUNG: The Department is not
3 preparing witnesses.

4 CHAIRMAN GOLDNER: Okay. Very good.

5 MR. WIESNER: And I will say, it is our
6 intent to have a witness here from the Energy
7 Supply Department of the Company. You may have
8 noticed in the revenue -- excuse me -- in the
9 record request responses that "Parker Littlehale"
10 was listed as one of the co-witnesses. And it's
11 my expectation that he will be here for that
12 hearing, and can speak with more direct knowledge
13 to the contract administration questions that the
14 Commission may be interested in.

15 The first request from the Bench was to
16 perform a comparison of the value of the PPA --
17 or, I should say, the benefit to customers with
18 and without the PPA. The people who would be
19 preparing that analysis are not here with me
20 today. We will try to have that done before the
21 hearing. But I can't commit to you that timing,
22 as I sit here today. I can't commit their time
23 and resources.

24 CHAIRMAN GOLDNER: I understand. And I

1 think the adjusted SCRC rate, with the latest
2 assumptions, relative to capacity and the RECs,
3 would also be helpful for the proceeding. We
4 don't have to have it, we can proceed without it.
5 But it would be more constructive if we have the
6 information sitting in front of all the parties
7 to be able to ask the appropriate questions.

8 Because, ultimately, in this docket,
9 we're tasked with setting the SCRC rate. So,
10 that's what we're trying to get to.

11 Okay. Well, we will issue a post PHC
12 order, just to make sure that we have all of the
13 record requests and everything documented,
14 Attorney Wiesner, because I know we've covered a
15 lot of ground today. So, we can do that.

16 And I'll just ask if the parties have
17 any additional comments? And, of course, if the
18 parties would like to make a closing statement,
19 that's always welcomed.

20 MR. YOUNG: No remarks or comments from
21 the Department.

22 CHAIRMAN GOLDNER: Okay. Attorney
23 Crouse?

24 MR. CROUSE: No comments from the OCA.

1 CHAIRMAN GOLDNER: Okay. Attorney
2 Wiesner?

3 MR. WIESNER: And I have nothing to add
4 at this point.

5 CHAIRMAN GOLDNER: Oh, you had two
6 minutes to spare in your opening statement. So,
7 we had time to spare.

8 MR. WIESNER: I could read the last
9 paragraphs again?

10 [Laughter.]

11 CHAIRMAN GOLDNER: Thank you.

12 MR. WIESNER: Noted.

13 CHAIRMAN GOLDNER: Okay. Well, I'll
14 thank everyone for their participation on this
15 hearing, which was called, I think, only 36 hours
16 in advance. This was very important for the
17 Commission to understand the situation, and
18 hopefully was helpful for the parties, too.

19 We'll look forward to the hearing on
20 February 21st. And we are adjourned. Thank you.

21 **(Whereupon the hearing was adjourned**
22 **at 2:35 p.m.)**

23

24