

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 23-091

DE 24-032

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

Petition for Adjustment of Stranded Cost Recovery Charge

**Burgess Plant Bankruptcy Settlement Review Pursuant to RSA 365:28 and
Allied Statutes**

**Order Terminating 'Chapter 340 Adder' as of October 31, 2024, and Governing
Ongoing Stranded Cost Recovery Charge Accounting of Burgess-Related Items**

ORDER NO. 27,053

August 30, 2024

This order, following: (1) the February 9, 2024 bankruptcy petition of the Burgess Plant¹ located in Berlin, New Hampshire, filed for in the U.S. Bankruptcy Court for the District of Delaware; (2) the termination of the Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource or Company) Power Purchase Agreement with Burgess Plant (Burgess PPA) by operation of law as of February 29, 2024; and (3) an August 14, 2024 Commission hearing regarding the potential impacts of these developments on the Company's Stranded Cost Recovery Charge (SCRC) accounting; presents the following Commission rulings. The Company is to: (1) terminate the so-called 'Chapter 340 Adder' of Part 2 of its SCRC rates, that relating to Burgess-Plant costs, as of October 31, 2024; (2) present modified Tariff language effectuating this Commission ruling within 20 days, or no later than September 19, 2024; (3) incorporate any remaining Burgess-Plant related residual costs into the

¹ Berlin Station, LLC and Burgess BioPower, LLC, (collectively referred to in this Order as 'Burgess Plant').

Company's General Part 2 SCRC charge accounting on November 1, 2024 for final recovery, with no additional Burgess-Plant related costs to qualify for recovery after that date, without prior Commission approval; and (4) present its final accounting of Burgess-Plant related costs to the Commission on November 20, 2024.

I. BACKGROUND AND POSITIONS

The proceeding for the Commission's review of the Company's SCRC charges for this rate year, docketed in Docket No. DE 23-091, was initiated by the Commission's issuance of a Commencement of Adjudicative Proceeding and Notice of Hearing order on December 22, 2023. The proceeding for the Commission's assessment of the impact of the termination of the Burgess PPA², the Burgess Plant bankruptcy, and ancillary matters on the Company's SCRC and the Commission's relevant legal authorities and Orders, docketed in Docket No. DE 24-032, was initiated by the Commission's issuance of a Commencement of Adjudicative Proceeding and Notice of Hearing Order on February 28, 2024.

A consolidated hearing in Docket Nos. DE 23-091 and DE 24-032 was scheduled for August 14, 2024 by a procedural order issued by the Commission on June 14, 2024. The Commission provided the following parameters for the scope of this hearing in its June 14 procedural order: "Eversource's [SCRC] rates were provisionally approved, pursuant to Order No. 26,938 (January 26, 2024), issued in Docket No. DE 23-091, to which the Burgess-Plant SCRC elements pertain. In an effort to address the provisionality of the SCRC rates in advance of the next (December 2024) SCRC filing date, the Commission schedules this hearing to assess whether

² Pursuant to the terms of a settlement agreement entered into by Burgess Plant and the Company in the U.S. Bankruptcy Court for the District of Delaware, approved by that Court on February 27, 2024, the Burgess PPA has been severed by operation of law as of February 29, 2024. This settlement agreement was filed by the Company into the DE 24-032 docket, and is available here: https://www.puc.nh.gov/Regulatory/Docketbk/2024/24-032/LETTERS-MEMOS-TARIFFS/24-032_2024-02-29_EVERSOURCE_SETTLEMENT-AGREEMENT.PDF.

certain elements of the Eversource SCRC Tariff should be sun-setted by the end of the current SCRC rate year (i.e., by January 31, 2025, or possibly before) as a consequence of the termination of the Burgess Plant PPA, and how a final Burgess-Plant related reconciliation for the SCRC can be timely effectuated in advance of Eversource's next SCRC filing, expected in December 2024. Following this hearing, the Commission may order modifications to the Eversource SCRC Tariff, order that Eversource provide a final accounting for Burgess-Plant related costs and/or reconciliation, or take other appropriate action."

All relevant docket filings, other than any information subject to confidential treatment, are available on the Commission's website at

<https://www.puc.nh.gov/Regulatory/Docketbk/2023/23-091.html> and

<https://www.puc.nh.gov/Regulatory/Docketbk/2024/24-032.html>.

On August 5, 2024, the Company filed a Technical Statement prepared by its personnel, Chen, Robinson, and Anderson, meant to "...illustrate the potential impacts of an interim adjustment to the SCRC rate intended to zero out the Burgess PPA-related costs at the end of the current SCRC rate period on January 31, 2025," with the Company's proviso that "...[t]he Company makes this submission purely for informational purposes and is not proposing any change to the SCRC rates currently in effect." Hearing Exhibit 7, at Bates Pages 1 and 3. The Company did acknowledge in its Technical Statement that "[a]s a result of the termination of the Burgess PPA, pursuant to court orders issued in the Burgess bankruptcy proceedings, all expenses and revenues related to the Burgess PPA are now known." Hearing Exhibit 7 at Bates Page 1.

The Company's Technical Statement presented a series of supporting schedules illustrating Eversource's projections of various potential SCRC rate-setting outcomes

based on differing approaches to the Burgess Plant issues. One schedule, Attachment YC/SRA-8, Page 2 of 2 (Hearing Exhibit 7, Bates Page 73), illustrates the impact on the "Beginning Monthly Balance" of the Burgess-Plant-related residual obligations being paid down by the Company through the Chapter 340 Adder of an ongoing "status quo" approach to SCRC rate setting. The Company projected that as of November 1, 2024, the Beginning Monthly Balance for the Burgess Plant residual obligations would be \$2.134 million, and by December 1, 2024, if the current Chapter 340\SCRC rate structure were to continue, the residual balance would flip into (\$700,000), meaning an overcollection. By the end of January 2025, the Chapter 340-related overcollection would increase to \$7.249 million, if the Chapter 340 Adder rate was to remain constant. Hearing Exhibit 7 at Bates Page 73; *see also* Hearing Exhibit 7 at Bates Page 2.

The August 14, 2024 hearing regarding this matter was held as scheduled, at which representatives of the Company, the New Hampshire Department of Energy (DOE), and the Office of the Consumer Advocate (OCA) appeared. (The OCA filed letters of participation in both of the DE 23-091 and DE 24-032 dockets in earlier phases of these proceedings). Eversource presented oral testimony in support of its Technical Statement through its personnel, Ms. Yi-An Chen, and Messrs. Robinson and Anderson, and the Company's outside counsel representing its interests in the Delaware Bankruptcy Court, Attorney Johnson. *See* Transcript of August 14, 2024 Hearing (Tr.), *passim*. The Company's witnesses also responded to Commission inquiries from the bench, and cross-examination by the DOE and OCA. The Commission also took administrative notice of the Company's responses to the Motions for Rehearings filed in Docket No. DE 24-046, the Eversource Default Service

proceeding, which presented the Company's position as to the allowable use of Part 2 of the SCRC rates, to which no party objected. Tr. at 9-10.

In its oral testimony at hearing, the Company advised that legal fees, as part of the residual Burgess-Plant related costs, accrued by Attorney Johnson, would total \$682,637, a slight increase as compared with the projected legal fees of \$635,522 presented in the Technical Statement and supporting schedules. Tr. at 13.

During the hearing, the Commission, through its bench inquiries, explored the potential of a sun-set of the Chapter 340 Adder prior to the end of this calendar year (2024), with the moving of any remaining residual Burgess-Plant related costs to Part 2 of the Company's SCRC rates for recovery. Tr., *passim*. The Company offered that this would be feasible, but expressed a concern that, due to the allocation of rates being different for the Chapter 340 Adder as compared with the general Part 2 SCRC rates, due to a past settlement agreement in Docket No. DE 19-142 (filed with the Commission on December 31, 2019) and related Commission Order (Order No. 26,331 (January 31, 2020)), there would be a necessity for a Commission modification of the relevant Tariff language and Orders approving the relevant settlement agreement to effectuate this transfer. Tr. at 68; 69-73. Both the DOE and the OCA expressed a preference for leaving the Chapter 340 Adder unchanged during the current SCRC rate year, the termination of the Burgess PPA notwithstanding, in their statements made at hearing. (Other matters were discussed by the Commission and parties at hearing, which will be taken up by the Commission in a future phase of this proceeding).

II. COMMISSION ANALYSIS

Pursuant to RSA 365:28, "At any time after the making and entry thereof, the [C]ommission may, after notice and hearing, alter, amend, suspend, annul, set aside,

or otherwise modify any order made by it. This hearing shall not be required when any prior order made by the [C]ommission was made under a provision of law that did not require a hearing and a hearing was, in fact, not held." RSA 365:28. The Commission is generally authorized to determine whether rates charged to retail utility customers in New Hampshire are just, reasonable, and lawful, under RSA 374:2 and RSA 378:7. RSA 374:2; RSA 378:7 ('...the commission shall determine the just and reasonable or lawful rates, fares, and charges to be thereafter observed...'); *see also Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty*, Order No. 26,806 (April 25, 2023), at 4, and *Public Service Company of New Hampshire d/b/a Eversource Energy*, Order No. 26,938 (January 26, 2024), at 7-8.

The Company's SCRC rates, specifically, are shaped by the above-mentioned settlement agreements and Commission orders, and the requirements of RSA 374-F:3, XII(d), which states: "Stranded costs should be determined on a net basis, should be verifiable, should not include transmission and distribution assets, and should be reconciled to actual electricity market conditions from time to time. Any recovery of stranded costs should be through a nonbypassable, nondiscriminatory, appropriately structured charge that is fair to all customer classes, lawful, constitutional, limited in duration, consistent with the promotion of fully competitive markets and consistent with these principles." RSA 374-F:3, XII(d). The Commission has held that the Company's SCRC is "a nonbypassable charge that includes stranded costs pursuant to RSA 374-F and other nonbypassable charges and credits as established by Commission order," with Part 2 of the SCRC reserved for non-securitized stranded costs; *see* Order No. 26,450 (January 29, 2021); *see also* 2015 PSNH Restructuring and Rate Stabilization Agreement at Pages 5 and 8, available here:

<https://www.puc.nh.gov/Regulatory/Docketbk/2014/14-238/MOTIONS->

[OBJECTIONS/14-238%202015-06-10%20PSNH%20DBA%20EVERSOURCE%20SETTLEMENT%20AGREEMENT.PDF](#)

Having reviewed the Company's Technical Statement, Hearing Exhibit 7, and heard the arguments and testimony presented at hearing on the issue of the continuance of the 'Chapter 340 Adder' for the remainder of this SCRC rate year, together with the overall record in these two dockets, we have concluded that now is the time to terminate the 'Chapter 340 Adder' SCRC rate feature for Eversource at the earliest opportunity. The Burgess PPA has been terminated, by operation of law through a Federal court's approval of a settlement agreement entered into by the Company and Burgess Plant, as of February 29, 2024. Therefore, ongoing support of a Burgess PPA through the operation of a Chapter 340 Adder is a legal impossibility, as that Burgess PPA has ceased to exist. It would not be just, reasonable, or prudent for the Company to have a Tariff rate feature relating to a defunct Burgess PPA on its Tariff indefinitely. It would also not be just or reasonable ratemaking for the Commission to allow a \$7.25 million overcollection to accrue on the Chapter 340 Adder account by the end of January 2025, *i.e.*, the end of the current SCRC rate year. It is also important for the Commission, and the Company, to work toward the removal of the current condition of provisionality from the Company's SCRC rates as soon as practicable.

Therefore, the Commission hereby makes the following rulings. The Chapter 340 Adder is to be TERMINATED, as of October 31, 2024. The Company is ORDERED to transfer, *i.e.*, incorporate, any residual Chapter 340\Burgess-Plant costs in existence as of October 31, 2024 to its general Part 2 SCRC account as of November 1, 2024. No Burgess-Plant related costs are to be added by the Company to the Part 2 SCRC account after November 1, 2024 without prior Commission approval. (It is the

Commission's expectation any such residual amounts would be minimal). The Company is ORDERED to file modified Tariff language effectuating these rulings with the Commission within 20 days, or no later than September 19, 2024. The Company is also ORDERED to file its final accounting of Burgess Plant-related costs with the Commission on November 20, 2024.

The Commission acknowledges the variation in the allocation of the Chapter 340 Adder rates among the various Eversource rate classes, as compared with the general Part 2 SCRC rates, arising from the DE 19-142 Settlement Agreement and Order No. 26,311. However, we view this to be a minor issue that may be remedied by a modification of Order No. 26,311 pursuant to our powers under RSA 365:28, in comparison to the need to terminate the collection of the Chapter 340 Adder rates as soon as practicable.

To effectuate the above rulings, we hereby rely on our authority under RSA 365:28 to MODIFY the following Orders, to the extent necessary: Order No. 25,213 (April 11, 2011); Order No. 26,920 (July 1, 2016); Order No. 26,198 (December 5, 2018); Order No. 26,331 (January 31, 2020); Order No. 26,333 (February 18, 2020); Order No. 26,665 (August 11, 2022); Order No. 26,705 (October 14, 2022); to the extent that any references therein to cost recovery of Burgess PPA\Burgess-Plant-related costs, whether through a 'Chapter 340 Adder' or otherwise, are ANNULLED as of November 1, 2024, with the proviso that the residual Burgess PPA\Burgess-Plant-related costs transferred to the Part 2 general SCRC account as of November 1, 2024 may be recovered through the Part 2 general SCRC rates, pursuant to an updated Company Tariff, subject to the ongoing approval and authority of the Commission; and we MODIFY Order No. 26,938 (January 26, 2024) to the extent necessary to enable the

Company to comply with the rulings made in this Order, with regard to modifications to the Company's current (provisionally-approved) SCRC rates.

Based upon the foregoing, it is hereby

ORDERED, that the 'Chapter 340 Adder' of the Eversource SCRC rates is TERMINATED as of October 31, 2024; and it is

FURTHER ORDERED, that Eversource shall transfer\incorporate any residual Burgess PPA\Burgess-Plant related costs in existence as of October 31, 2024 to its general Part 2 SCRC account as of November 1, 2024, with recovery to be made from the Eversource general Part 2 SCRC rates as of November 1, 2024; and it is

FURTHER ORDERED, that Eversource shall not add any Burgess-Plant or Burgess PPA-related costs to its Part 2 SCRC rate account after November 1, 2024 without prior Commission approval; and it is

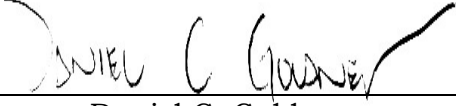
FURTHER ORDERED, that Eversource shall file its conforming Tariff pages incorporating the terms of this Order, and supporting calculations and allocations, within 20 days of the date of this Order, or no later than September 19, 2024; and it is

FURTHER ORDERED, that Eversource shall file its final accounting of Burgess PPA\Burgess-Plant-related costs on November 20, 2024; and it is


FURTHER ORDERED, that, pursuant to its authority under RSA 365:28, and all allied authority, the Commission MODIFIES the following Orders, to the extent necessary: Order No. 25,213 (April 11, 2011); Order No. 26,920 (July 1, 2016); Order No. 26,198 (December 5, 2018); Order No. 26,331 (January 31, 2020); Order No. 26,333 (February 18, 2020); Order No. 26,665 (August 11, 2022); Order No. 26,705 (October 14, 2022); to the extent that any references therein to cost recovery of Burgess PPA\Burgess-Plant-related costs, whether through a 'Chapter 340 Adder' or otherwise, are ANNULLED as of November 1, 2024, with the proviso that the residual

Burgess PPA\Burgess-Plant-related costs transferred to the Part 2 general SCRC account as of November 1, 2024 may be recovered through the Part 2 general SCRC rates, pursuant to an updated Company Tariff, subject to the ongoing approval and authority of the Commission; and the Commission MODIFIES Order No. 26,938 (January 26, 2024) to the extent necessary to enable the Company to comply with the rulings made in this Order, with regard to modifications to the Company's current (provisionally-approved) SCRC rates.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of August, 2024.



Daniel C. Goldner
Chairman



Pradip K. Chattopadhyay
Commissioner

Service List - Docket Related

Docket#: 23-091

Printed: 8/30/2024

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