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STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

March 13, 2024 - 9:04 a.m.
21 South Fruit Street
Suite 10
Concord, NH

RE: **DE 24-032**

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

Burgess Plant Bankruptcy Settlement
Review Pursuant to RSA 365:28 and
Affiliated Statutes.

*(Hearing regarding Motion to Dismiss
and Burgess Bankruptcy Matters)*

PRESENT:

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

Alexander Speidel, Esq./PUC Legal Advisor

Tracey Russo, 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.
Office of Consumer Advocate

Reptg. New Hampshire Dept. of Energy:

Matthew C. Young, Esq.
Marie-Helene Bailinson, Esq.
Stephen Eckberg, Electric Division
(Regulatory Support Division)

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

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I N D E X

PAGE NO.

SUMMARY/SCOPE OF DOCKET BY CHAIRMAN GOLDNER	3
QUESTION BY CHAIRMAN GOLDNER <i>(Re: Withdrawal of Motion to Dismiss)</i>	6
RESPONSE BY MR. WIESNER	6
FURTHER STATEMENTS ON MOTION TO DISMISS BY:	
Mr. Young	7
Mr. Crouse	8
QUESTIONS BY CMSR. SIMPSON	10
QUESTIONS BY CMSR. CHATTOPADHYAY	22
QUESTIONS BY CHAIRMAN GOLDNER	26

P R O C E E D I N G

CHAIRMAN GOLDNER: Okay. Good morning.

This is the hearing on the Burgess Plant Bankruptcy matters held pursuant to the Commission's Commencement of Adjudicative Proceeding and Notice of Hearing Order issued on February 28th, 2024, in response to the U.S. Bankruptcy Court in Delaware approving the Eversource/Burgess Settlement Agreement. I'm here with Commissioner Simpson and Chattopadhyay.

The Commission takes note of the Eversource Motion for Dismiss this proceeding filed on March 6th, 2024. We also note the New Hampshire Department of Energy position statement filed on March 11th, and the OCA position statement also filed on March 11th, which was filed following the Office of the Consumer Advocate's Letter of Participation filed on March 1st. The Eversource affidavit of publication was also filed to the Commission on March 1st.

At the outset of this proceeding, the Commission indicates that it intends to ask questions of Eversource and the other parties

1 regarding aspects of the Burgess Plant situation
2 that are relevant to the various existing
3 Commission orders out there, the most recent of
4 which being the Commission Order 26,938, in the
5 SCRC docket, DE 23-091, which approved the scheme
6 Eversource presented in January of this year for
7 paying the \$71 million CRF balance while the
8 Burgess Plant remained a going concern.

9 This proceeding, convened pursuant to
10 RSA 365:28, and aligned statutes, affords the
11 hearing that would allow the Commission to close
12 the loop on necessary modifications for the
13 orders presented in the various old Burgess Plant
14 dockets, including Docket DE 19-142 and Docket DE
15 10-195, among others, to reflect the severance of
16 the Burgess Plant PPA.

17 The Commission would plan on issuing an
18 omnibus order terminating the effectiveness of
19 these orders, if appropriate. We also point out
20 that the actual specific date of the severance of
21 the PPA was fixed as February 29th, 2024, by
22 means of Eversource entering into the Settlement,
23 as opposed to continuing litigation at the
24 Bankruptcy Court.

1 Therefore, the Commission will consider
2 the issues surrounding the Eversource \$3.35
3 million payment, including the \$1.1 million
4 liquidated damages payment, and whether
5 Eversource intends to have these payments covered
6 by ratepayer funds within the SCRC Chapter 340
7 Adder, or otherwise.

8 Also, the Commission is interested in
9 hearing from Eversource if it has any intention
10 to re-enter into a PPA with the Burgess Plant
11 under the auspices of the 2011 and post 2011
12 Commission orders relating to Burgess Plant in
13 the future.

14 So, in light of these factors, after
15 taking appearances, the Commission will invite
16 Eversource to withdraw its Motion to Dismiss at
17 the outset of today's proceeding.

18 We'll now take appearances, starting
19 with Eversource.

20 MR. WIESNER: Good morning,
21 Commissioners. David Wiesner, representing
22 Public Service Company of New Hampshire, doing
23 business as Eversource Energy.

24 CHAIRMAN GOLDNER: Thank you. And the

1 Office of the Consumer Advocate?

2 MR. CROUSE: Good morning,
3 Commissioners. My name is Michael Crouse. I am
4 here as a Staff Attorney for the OCA,
5 representing residential customers in this
6 matter.

7 Thank you.

8 CHAIRMAN GOLDNER: Thank you. And the
9 New Hampshire Department of Energy?

10 MR. YOUNG: Good morning,
11 Commissioners. Matthew Young, on behalf of the
12 Department of Energy. With me today is Stephen
13 Eckberg, who is a Utility Analyst in the Electric
14 Division; and as well as Marie-Helene Bailinson,
15 who is co-counsel in this docket.

16 CHAIRMAN GOLDNER: Very good. Okay.
17 Thank you.

18 We'll now inquire of Mr. Wiesner about
19 whether the Company will withdraw its Motion to
20 Dismiss?

21 MR. WIESNER: Mr. Chairman, we will not
22 withdraw that Motion. That Motion is
23 well-founded, well-supported, and should be
24 granted by the Commission.

1 I will also note that it would be
2 dispositive of this docket, and the ten-day
3 period for parties to file written objections to
4 it has not yet passed. So, this issue is not
5 even ripe for the Commission's decision, in our
6 view.

7 CHAIRMAN GOLDNER: Okay. So, the
8 Commission will take a short recess, and return
9 at 9:25.

10 *(Recess taken at 9:13 a.m., and the*
11 *hearing reconvened at 9:26 a.m.)*

12 CHAIRMAN GOLDNER: Okay. We'll hear
13 from the rest of the parties, and anyone from the
14 public, today that would like to comment relative
15 to the Motion to Dismiss, beginning with the
16 Department of Energy.

17 MR. YOUNG: Thank you, Mr. Chairman.
18 Thank you, Commissioners.

19 In terms of the Company's Motion to
20 Dismiss, I think it's a little bit unclear to the
21 Department, at first glance, just because there's
22 no petition in this docket, but it seems that the
23 Company is asking for the remaining issues to be
24 discussed in the SCRC docket, 23-091. And I

1 think that the Department doesn't dispute the
2 facts surrounding the Settlement as laid out in
3 the Motion to Dismiss.

4 So, I believe, as we stated in our
5 position statement, any questions the Commission
6 might have related to recovery or costs incurred
7 are probably more appropriately addressed in a
8 ratemaking docket, such as that 23-091.

9 But I think the Commission also did
10 mention that the -- views the Settlement as
11 severed as of February 29th. It was my
12 understanding that the Bankruptcy Court rejected
13 or, I guess, voided the PPA as of February 9.
14 So, if there are, you know, issues to discuss in
15 that realm, the Department is happy to
16 participate in any proceeding the Commission may
17 wish to explore those questions.

18 CHAIRMAN GOLDNER: Okay. Thank you.
19 The OCA?

20 MR. CROUSE: Thank you.

21 The OCA recognizes Attorney Wiesner's
22 comment that the ten-day window to respond to the
23 Motion to Dismiss is still active. The OCA has
24 been reviewing the Motion to Dismiss with great

1 interest, and is currently leaning as to not
2 objecting to it. The factual assertions, we
3 believe, are important disputing in this matter.
4 But there are some confusion that the OCA is
5 experiencing between the facts laid out by the
6 Commission versus the facts laid out by
7 Burgess -- or, I'm sorry, by Eversource in this
8 matter, such as whether or not it was Eversource
9 that severed the PPA versus the Delaware
10 Bankruptcy Court authorizing the Debtors to
11 reject the PPA. So, perhaps if some of those
12 factual claims could just be cleared up now.

13 But, to be more direct, the OCA would
14 be supportive of any docket that the Commission
15 would like to answer these questions in, but
16 perhaps it would be more administratively
17 efficient consolidating both of these dockets
18 back to 23-091.

19 Thank you.

20 CHAIRMAN GOLDNER: Okay. Is there
21 anybody from the public that would like to speak
22 today?

23 *[No verbal response.]*

24 CHAIRMAN GOLDNER: Or anyone else in

1 the hearing room?

2 [No verbal response.]

3 CHAIRMAN GOLDNER: Okay. Do the
4 Commissioners have any questions for the parties?

5 CMSR. SIMPSON: I just have one for
6 Attorney Young.

7 I think one thing that we are trying to
8 determine is a path forward with respect to prior
9 orders, and the appropriate forum, to understand
10 whether prior Commission orders should be or need
11 to be modified, in light of the changed
12 circumstances, and whether the SCRC docket or
13 this proceeding, or another proceeding, is a more
14 appropriate forum to do that?

15 And I wonder if you or any of the other
16 parties have a perspective on that?

17 MR. YOUNG: So, I think, I guess from
18 the Department's perspective, it's not clear that
19 other -- that the prior orders would need to be
20 amended, but rather the -- I think the Settlement
21 Agreement is just a new phase of the, I guess,
22 dynamic that things are in with Eversource and
23 Burgess, and kind of the world surrounding SCRC
24 and the -- in that docket. So, there's --

1 there's new costs that have come to light.

2 So, it's not clear that it would be
3 necessary to review the old orders, but rather
4 move forward under the new paradigm.

5 CMSR. SIMPSON: Okay. Thank you.

6 Mr. Crouse, or I think Attorney
7 Wiesner, I'll give him an opportunity to weigh in
8 as well.

9 MR. CROUSE: Thank you for the
10 opportunity to weigh in.

11 The OCA recognizes that the Commission
12 has statutory authority to modify prior orders
13 made by the Commission. But what's unclear to
14 the OCA in this matter is that the PPA has been
15 made void by the Delaware Bankruptcy Court, and
16 the ability for the Commission to modify
17 something that no longer exists on top of the
18 matter that, as I laid out in our position
19 statement, the ineluctable truth that this has
20 just been a terrible deal for residential
21 customers.

22 I would love to stand before you all
23 today and advocate that, yes, you can change the
24 past and make it better by, you know, adding a

1 security to the Excess Cumulative Reduction
2 Amount. But I am not sure I can, in good faith,
3 say that's legally permissible. So, that's what
4 we're trying to figure out currently.

5 MR. WIESNER: So, I will make an
6 attempt to clarify the timing of the Court's
7 rejection of the PPA, and the ultimate
8 "termination day", let's say, of the PPA on
9 February 29th. Because there seems to be, you
10 know, some need for greater clarity there. I
11 think we laid it out pretty well in our Motion,
12 and previously in the update filing that we made
13 on February 29th, both in this docket and in the
14 SCRC docket.

15 But the Debtors, when they filed
16 bankruptcy, according to what we understand their
17 plan was all along, following the Governor's veto
18 of the most recent legislative attempt to extend
19 the suspension of the impact of the Excess CRF
20 recoupment, the Debtors sought to reject,
21 pursuant to the applicable bankruptcy law, the
22 Power Purchase Agreement as burdensome to the
23 bankruptcy estates in connection with their
24 proposed reorganization.

1 The Company objected to that rejection
2 very strenuously, in a written objection, which I
3 believe has been filed with the Commission in the
4 SCRC docket. The Court nonetheless, at a hearing
5 on February 21st, indicated that it would approve
6 that rejection, and essentially did approve the
7 Debtors' Motion to Reject the PPA. But left open
8 the question of when that would be effective,
9 because the Debtors had sought for that
10 effectiveness of the PPA rejection to relate back
11 *nunc pro tunc* to February 9th, which was the date
12 of their petition filing. That was left open.

13 In the absence of clarity on that
14 point, and with other issues swirling around, the
15 Company and the Debtors, the Burgess companies,
16 entered into settlement negotiations.

17 Ultimately, a settlement was reached, brought to
18 the Bankruptcy Court, and approved on the 28th.
19 And, pursuant to that Settlement, there was
20 greater specificity built around the timing of
21 the implementation of the Court's order to reject
22 the PPA, and the transition from the Company as
23 Lead Market Participant for the plant, to the
24 Debtors, or their affiliate, to serve as Lead

1 Market Participant in the ISO-New England Market
2 Settlement system for this power plant. That was
3 an important consideration. The Debtors had
4 actually filed a separate motion to seek the
5 Court's approval or direction to the Company to
6 transfer that Lead Market Participant status to
7 an affiliate of the Burgess companies.

8 So, that's the context of the
9 Settlement. In effect, the PPA was rejected at
10 the Debtors' motion, approved by the Court, over
11 the Company's objection, pursuant to the
12 applicable bankruptcy law. And the only issue
13 that remained outstanding was when that would
14 take effect. And the Settlement specifies that
15 date, and provides for transitional matters to be
16 handled through the end of February, as well as
17 the Settlement payment in the amount that is well
18 known, because it's spelled out in the Settlement
19 Agreement.

20 In terms of our view of whether there's
21 any basis for modifying prior orders, you know, I
22 think it's clear from our Motion, the PPA is
23 gone. The PPA was done. It was rejected, as I
24 noted. And, then, pursuant to the approved

1 Settlement Agreement, it had no further force and
2 effect as of February 29th.

3 So, there's really no need for or point
4 for or basis for any modification of a prior
5 order with respect to the PPA, because it's not
6 possible to rewrite history by changing the past.
7 And any order modifying that prospective effect
8 only, and there's really no point in
9 prospectively modifying an order relating to a
10 PPA which no longer exists.

11 And, so, the only real issue is how and
12 when the Company will recover the full costs that
13 it incurred pursuant to the PPA through the
14 Stranded Cost Recovery Charge mechanism. And,
15 you know, our view, and I think the Department of
16 Energy seems to agree with us, is that that is
17 best addressed in the pending SCRC docket, either
18 on an interim basis, as a near-term adjustment to
19 the provisionally approved rates, or, if not,
20 then we'll be back here in December and January
21 talking about those numbers and what that all
22 looks like.

23 Essentially, even though the PPA is
24 gone, there are still costs incurred by the

1 Company that need to work their way through the
2 SCRC mechanism, and it's not an immediate change.
3 Because -- just because a contract is no longer
4 in effect, doesn't mean that there aren't costs
5 that were incurred more recently, and prior
6 period reconciliations that need to sort of play
7 themselves out through that mechanism.

8 So, our view is that, you know, both
9 because of the flaws that we noted in the Order
10 of Notice for this docket, but also in the
11 interest of administrative efficiency, and
12 avoiding duplicative -- duplication, I should
13 say, that it makes the most sense, and it is most
14 proper to address those remaining issues in the
15 SCRC docket.

16 And we fully understand, and I think
17 we've acknowledged this in the Motion, that the
18 Commission is likely to have some probing
19 questions about the Settlement, you know, what it
20 entails, how it works, what the dollar impacts
21 are, what the net benefits and costs are, and how
22 all of that should flow through to customers
23 through the SCRC mechanism. And, at the
24 appropriate time, we will be prepared to address

1 those questions in that context.

2 CMSR. SIMPSON: So, with respect to the
3 forum, the Company does not object to that
4 inquiry being handled within 23-091, the SCRC
5 proceeding?

6 MR. WIESNER: The inquiry regarding the
7 bankruptcy Settlement terms, you know, reasonable
8 and relevant questions about those bankruptcy
9 Settlement terms and how they would impact the
10 costs to be recovered from customers through the
11 SCRC, are perfectly appropriate, it seems to us,
12 and should be addressed in that pending docket.

13 CMSR. SIMPSON: And with respect to the
14 prior orders of the Commission, it has been a
15 practice for the Commission to update orders in
16 the past, as situations change. I certainly
17 recognize the decision by the Bankruptcy Court.
18 So, the Company doesn't feel that it would be
19 appropriate for the Commission to issue order --
20 an order or orders that capture the decision by
21 the Bankruptcy Court, and how they implicate
22 prior Commission orders?

23 MR. WIESNER: I mean, the prior orders
24 referred to a PPA, fully approved by this

1 Commission in 2011. And, then, the specific CRF
2 recoupment and netting mechanisms suspended for
3 four years pursuant to legislative action, that
4 led to further Commission orders consistent with
5 that legislation. That PPA is no more. And
6 there will not be another PPA that looks like
7 that. I may be talking somewhat out-of-turn in
8 saying that, but I think that is nearly
9 impossible to conceive that there would be such a
10 thing. And, if it were, if any such similar PPA
11 were proposed, I believe it would be subject to
12 the jurisdiction of the Department of Energy,
13 rather than the Public Utilities Commission,
14 given the legislative changes that went into
15 effect in 2021. Because, as we noted in the
16 Motion, the PPA is essentially a wholesale power
17 purchase agreement, which is FERC jurisdictional,
18 for energy and capacity. It also involves REC
19 sales. And it's the REC sales that implicate RSA
20 362-F:9, and that statute has, since 2011, and,
21 as I noted, in 2021, been amended to provide that
22 it's the DOE, rather than the PUC, that has
23 jurisdiction over those long-term REC contracts.
24 So, if there were any such proposal to enter into

1 a similar agreement with a renewable energy
2 generator, whether this plant or any other, that
3 would go to the DOE, rather than the PUC.

4 So, in short, we see no reason for, as
5 I said, or basis for any modification to the
6 prior orders. They may have little or no, in
7 terms of -- well, let me just say, that the PPA
8 is terminated, pursuant to the Bankruptcy Court's
9 rejection and the approved Settlement Agreement,
10 it is no more. There is no need to modify prior
11 orders. Essentially, they are moot, at this
12 point, with respect to specific PPA terms.

13 That might be different, I'll just
14 offer, that might be different if the Settlement
15 had proposed an amendment to the PPA that was
16 going to continue in effect for another six
17 months or something. But whether that amendment
18 would be something that the PUC would need to
19 address, rather than the DOE, is a question that
20 we don't need to address, because that's not
21 the -- that's a counterfactual, and that's not
22 the situation that we have.

23 So, basically, the PPA is history. The
24 costs incurred by the Company, at this point, are

1 history, as are the benefits recouped for the
2 benefit of customers through the Settlement
3 terms. And the only issue that remains is how
4 and when the net costs will be recovered by the
5 Company through the SCRC mechanism. And in that
6 context, it's certainly our view, and I think, if
7 I understand correctly, shared by the Department
8 of Energy, that those issues be addressed in the
9 SCRC docket, rather than here.

10 And, when a hearing is, you know,
11 properly noticed to occur in the SCRC docket to
12 address these issues, we will bring folks who can
13 speak to the bankruptcy Settlement in great
14 specificity.

15 CMSR. SIMPSON: I know you articulated
16 the Company's concerns with respect to notice in
17 your Motion, correct?

18 MR. WIESNER: That's correct. Yes.

19 CMSR. SIMPSON: Could you articulate
20 what notice you feel would be appropriate in the
21 SCRC docket?

22 MR. WIESNER: Well, I'm not sure it's
23 necessary to have a Supplemental Order of Notice
24 there, because, you know, the bankruptcy -- the

1 PPA, the bankruptcy, and how the bankruptcy was
2 going to be resolved, let's say, how the issue of
3 the proposed PPA rejection was going to be
4 resolved in the Bankruptcy Court, has been
5 addressed at some length already in the SCRC
6 docket, although the timing was such that, you
7 know, not to rub salt in it, but we were sitting
8 here on the morning of February 21st, when the
9 Court was deciding to reject the PPA. That's
10 just the fact of it.

11 So, I think that the issues surrounding
12 the bankruptcy and the status of the PPA in the
13 bankruptcy were already at issue in the SCRC
14 docket. And there's already been a substantial
15 amount of questioning about that. And, in fact,
16 one of the record requests, 9.1, if memory
17 serves, showed the Commission a hypothetical
18 situation where the PPA would not be in effect as
19 of March 1st. Now, that did not, of course,
20 address the specific Settlement terms that were
21 ultimately entered into and approved, but is at
22 least some indication of what that world might
23 have looked like at the time, and, you know, does
24 look like now, again, without taking into account

1 the specific Settlement terms.

2 CMSR. SIMPSON: Okay. And I invite OCA
3 and the DOE, and any members of the public, if
4 they have a perspective on appropriate notice?

5 And, if there's no comment, that's
6 fine. But I just wanted to give them an
7 opportunity to weigh in.

8 MR. CROUSE: The OCA doesn't have any
9 comments. Thank you.

10 MR. YOUNG: The only comment I think
11 the Department would add would be that that
12 docket was the -- the Burgess-related costs were
13 approved on an interim basis, that that would
14 also just be a consideration of the Commission, I
15 think.

16 CMSR. SIMPSON: Okay. I don't have any
17 further questions, Mr. Chairman. Thank you.

18 CHAIRMAN GOLDNER: Commissioner
19 Chattopadhyay.

20 CMSR. CHATTOPADHYAY: I'm just going to
21 get a confirmation on something that will be
22 useful in how I view this, even if it is done in
23 the other docket. So, this is all fact. So, I
24 just want to go get a confirmation.

1 The approval of the PPA in 2011, I
2 understand the PPA is no longer there, but the
3 approval of the PPA by the Commission at that
4 time, in 2011, it was subject to this need or the
5 \$100 million cap over-market costs going over
6 \$100 million will be returned to the ratepayers,
7 right?

8 That is what the Commission -- or, sort
9 of said in the order, or am I -- I'm not correct
10 about it? I just want to get a confirmation.

11 MR. WIESNER: Well, I mean, the order
12 and the record in that docket should probably
13 seek for themselves. I will just offer an
14 understanding of that order, which was it imposed
15 a condition, on approval of the PPA, that the
16 above-market costs, energy costs, of the contract
17 be tracked through the cumulative reduction, and
18 that any amounts in excess of \$100 million be
19 subject to the netting and recoupment mechanism,
20 which is the one-twelfth of the prior operating
21 year's balance recovered through a netting
22 against payments that would otherwise be payable
23 to Burgess going forward.

24 And, as noted by the Consumer Advocate,

1 there was no security, there was no real backstop
2 for that, it was just a contractual obligation of
3 Burgess as required by the PUC. The parties then
4 went and amended the PPA to include those
5 provisions, and the PUC ultimately approved the
6 PPA as it had been amended. And it's that
7 version of the PPA, with those features in it,
8 that were then subject to further proceedings at
9 the PUC, generally at the direction of the
10 Legislature, which, you know, approved two
11 suspensions of the netting mechanism. And that's
12 what led to a \$71 million balance, quite frankly.
13 Because the netting that might have occurred
14 sooner to fill in the hole, if you will, above
15 100 million, didn't occur because of the
16 legislative action and the Commission's orders
17 consistent with that legislation.

18 CMSR. CHATTOPADHYAY: Any response from
19 the other parties?

20 I mean, I am just trying to get a
21 confirmation, that's all, that it was subject to
22 what just was described?

23 MR. CROUSE: If the DOE does not mind,
24 I'll respond first.

1 But laid out in my position statement,
2 I addressed, back in Docket 10-195, Tab 148,
3 there was an exchange between the former Consumer
4 Advocate, Meredith Hatfield, and then PSNH
5 discussing how there was no security, there were
6 certain concerns over that \$100 million cap, and
7 then anything over with the expectation of it
8 being returned. But that clearly didn't play
9 out, the order wasn't modified to include that.
10 The original order did not have a security
11 guarantee or some sort of legal assurance or
12 protection for customers. And, so, that's really
13 the basis of the OCA's frustration, is that
14 mining any professional finger-wagging or "told
15 you so"s, it was a frustration that customers
16 were already being forced to hemorrhage money
17 above energy market costs, with no legal
18 protection for that money to come back to them in
19 the event of a termination, a bankruptcy,
20 something to that effect.

21 MR. YOUNG: The Department, I think,
22 agrees with all the facts that you've just heard
23 from the Company and the OCA.

24 I guess I would also just add that we

1 believe there is a unsecured claim for damages in
2 the Bankruptcy Court to that effect.

3 Okay. I think I'll leave it at that.

4 CMSR. CHATTOPADHYAY: Thank you.

5 That's all I have.

6 CHAIRMAN GOLDNER: Okay. The
7 Commission will take a recess, returning at
8 10:15.

9 *(Recess taken at 9:50 a.m., and the*
10 *hearing reconvened at 10:18 a.m.)*

11 CHAIRMAN GOLDNER: Okay. I'll just
12 begin with, back on the record, a follow-up
13 question for Mr. Wiesner.

14 So, does the Company expect the
15 Chapter 340 Adder to terminate or end in 2024?

16 MR. WIESNER: I mean, again, as I said
17 before, the costs of the PPA need to work their
18 way through the system. And I think the answer
19 to that is "no".

20 I'm not even, I can't -- as I sit here
21 today, I can't even tell you that there wouldn't
22 be some stragglng costs that would need to be
23 recovered in 2025. And that's in part because,
24 you know, as we established previously in the

1 SCRC docket, you know, these rates are based on
2 projections and assumptions. And, if things
3 don't work out as they were assumed and
4 projected, then there may be an under-recovery.
5 There may be lower sales than presumed.

6 CHAIRMAN GOLDNER: Attorney Wiesner,
7 isn't everything known at this point? So, the
8 PPA is severed. The payments have all been
9 determined and/or made. So, let's assume for the
10 moment, and what you may be pointed to is, let's
11 assume for a moment that the Commission were to
12 ask the Company to recalculate everything next
13 month, then the Company would recalculate, and
14 then the Chapter 340 and the portion of that --
15 portion of Part 2 would all be completed by the
16 end of 2024, in that scenario, correct?

17 MR. WIESNER: I mean, I don't want to
18 commit to that. I'm not the person to speak to
19 that. That may be possible. But, you know, all
20 of these rates are based on certain assumptions
21 about forward sales. And, if, you know, if it's
22 a cooler summer, and there are fewer
23 kilowatt-hour sales than were projected, then
24 there's going be an under-recovery, and then that

1 will have to be made up, because these things
2 just continue to reconcile.

3 So, there's a certain number of dollars
4 that will be known, because the PPA is now
5 history, that will have to work their way through
6 the system, but the system, as I said, is based
7 on assumptions and projections. And it's at
8 least possible that, if the revenue obtained by
9 the Company, based on the rate that's approved,
10 results in an under-recovery because of lower
11 sales, for example. And that could be due to
12 load migrating -- no, that's default service,
13 never mind. I misspoke there, I'm sorry. If
14 sales are lower than were anticipated, then you
15 could have an under-recovery, even though you
16 knew exactly how much the revenue requirement was
17 based on the costs that were incurred.

18 CHAIRMAN GOLDNER: So, let me puzzle
19 through that.

20 So, the severed PPA means that the
21 Company is no longer making REC payments or
22 capacity payments or energy payments to Burgess.
23 The deal, as of February 29th, is that Burgess
24 goes directly to the market, now that Eversource

1 is no longer involved.

2 So, I'm puzzling over why, as of
3 February 29th, the Company doesn't know exactly
4 what needs to be recovered?

5 MR. WIESNER: Well, that wasn't the
6 question, and that wasn't my answer. I mean,
7 someone in the Company, not me, knows how much
8 has been paid to Burgess and will need to be
9 recovered from customers. How that translates
10 into the SCRC rate going forward, for a forward
11 period, with the uncertainty that is always
12 embedded in any future projections, that's what's
13 uncertain. And there still could be an
14 under-recovery, if, for example, as I said, sales
15 don't match what was projected, even if the
16 projections were perfectly reasonable based on
17 what was known at the time.

18 CHAIRMAN GOLDNER: So, let me just
19 repeat that back.

20 So, the dollar impact is known. You
21 know that you've got a carryforward of 28
22 million. You know that you've got all these
23 other costs that are known as of February 29th.
24 What you don't know is the denominator, that is

1 those dollars become a rate, and, because the
2 denominator is the load, that load may change a
3 little bit, and, so, therefore, the recovery
4 might not be perfect. Is that what you're
5 saying?

6 MR. WIESNER: Yes. The rate would be
7 developed based on projections of sales,
8 reasonable projections based on prior experience.
9 But the sales could differ, based on energy
10 efficiency, based on a cooler-than-expected
11 summer, based on, you know, really cold weather
12 in December. It could go either way. And
13 there's just no way to predict that with
14 certainty at this point.

15 CHAIRMAN GOLDNER: And I think the
16 disconnect between what I was asking and you were
17 answering was, when you say "sales", you're
18 talking about Eversource sales in total, you're
19 not talking about Burgess sales?

20 MR. WIESNER: Oh, no. I mean, that,
21 you know, from and after March 1st -- well, let
22 me put it this way. Under the Settlement
23 Agreement, there was final payments to be made to
24 Burgess as of March 11th. And my best

1 understanding is that those payments were made,
2 and there should be no further payments made to
3 Burgess with respect to the PPA itself.

4 CHAIRMAN GOLDNER: Okay. Thank you.
5 So, I'm just going to see if I can repeat that
6 back.

7 So, as of March 11th, all of the
8 payments have been made, all the dollars are
9 known, in terms of -- in terms of what is owed
10 Burgess and what is owed ratepayers, the dollars
11 are known. The variable that you're referring to
12 is the total Eversource sales, which is the
13 denominator in the rate. And, so, there is a
14 chance for a little bit of over/under, based on
15 sales varying from the Eversource forecast.

16 MR. WIESNER: That's correct. As I sit
17 here, there may be some other variables that
18 could impact the rate, but those are what I can
19 think of. But any forward-looking rate, you
20 know, in a reconciling rate mechanism, is based
21 on assumptions, including sales assumptions.
22 And, if those sales don't materialize, for
23 whatever reason, then there's likely to be an
24 under-recovery of dollars that the Company is

1 entitled to recover from customers.

2 CHAIRMAN GOLDNER: Conversely, the
3 sales could be higher than expected, and then it
4 would go the other direction?

5 MR. WIESNER: Absolutely.

6 CHAIRMAN GOLDNER: Okay.

7 MR. WIESNER: And, in the normal course
8 of things, that reconciliation now, under the
9 current paradigm, occurs annually, and that would
10 first come to the Commission's attention with the
11 initial filing that will be made in December of
12 this year.

13 CHAIRMAN GOLDNER: I think, for sure,
14 we would be very interested in the discussion at
15 least of updating all the mathematics so that the
16 2024 is the end of the Chapter 340 and the
17 Burgess portion of the Part 2, so that the issue
18 is cleaned up this year.

19 MR. WIESNER: I'll just say, if there's
20 an interim adjustment to the SCRC, I think it
21 could be designed with the goal of achieving that
22 objective. But, again, whether that materializes
23 is really due to these other, you know,
24 variables, which are, in many cases,

1 weather-related.

2 CHAIRMAN GOLDNER: Understand. And
3 just in the hypothetical, if that update were,
4 say, scheduled for July 1st, then half of the
5 sales actuals would be known at that point,
6 minimizing the amount of fluctuation, the dollars
7 would, of course, be known, and then the recovery
8 would ostensibly be a lot better than it would
9 have been had we set it, you know, months ago.

10 MR. WIESNER: Well, some other rate
11 components that were based on assumptions could
12 be "trued up", for lack of a better word, on an
13 interim basis against what is known to have
14 occurred. That's true. But there would still be
15 a projection for the remaining portion of the
16 year, and exactly what that looks like, I don't
17 quite know.

18 And I will note, and, again, I'll refer
19 back to the Record Request 9.1 in the SCRC
20 docket, that the Company's projections for the
21 SCRC for this year, when they were made, assumed
22 that the PPA remained in effect, but that the
23 netting would be in place. And, so, those
24 projections assumed that the Company would get

1 the market benefit, the market value, if you
2 will, of the energy and capacity for the energy
3 for that year, while netting out the one-twelfth
4 of the Excess Cumulative Reduction factor from
5 the previous year.

6 So, you know, everything's changed.
7 And exactly what that change looks like, you
8 know, it's at least possible that there would be
9 an increase in the SCRC rate in the near term, in
10 order to catch up with what had occurred prior to
11 its change, and also target, you know, the goal
12 of zeroing it out, if possible, by the end -- by
13 January of '25.

14 CHAIRMAN GOLDNER: Okay. And just I'll
15 ask one final question, just to make sure I
16 understand.

17 So, totally understand sales, and I
18 think that one is settled. I just -- I'm not
19 sure I understood your answer completely with the
20 dollars.

21 So, whether it's the RECs, whether it's
22 the energy payments, and anything else associated
23 with the Chapter 340, Burgess, and the recovery
24 the Company is seeking, the numerator, the

1 dollars involved, will all be known and are known
2 as of March 11th?

3 MR. WIESNER: I believe that's correct.
4 And there should be no further payments to
5 Burgess. So, whatever they were is what they
6 were. And we should also know what the market
7 value of the energy and capacity was for the
8 month of February, and January, and so that can
9 be taken into account as well.

10 So, with respect to the Company's costs
11 side, the dollars should be known, and then it's
12 just a question of how the rate gets designed to,
13 you know, with the goal of zeroing out by the end
14 of the current SCRC period, and what that looks
15 like. And, again, that is based on projections,
16 and reality may be different, and then that could
17 result in an under-collection, or an
18 over-collection as you noted, that would then
19 have to work its way into the next year's
20 reconciliation.

21 CHAIRMAN GOLDNER: Thank you. Do the
22 Commissioners have any follow-on questions?

23 *[Cmsr. Simpson indicating in the*
24 *negative.]*

1 CMSR. CHATTOPADHYAY: No.

2 CHAIRMAN GOLDNER: Okay. So, I think
3 we can wrap things up today here quickly.

4 We'll await the ten days to expire,
5 which we calculate to be end of day on Monday,
6 for the parties to file into the docket relative
7 to the Motion to Dismiss. We will -- just a
8 moment please. And, so, we'll consider those
9 filings once received.

10 And, pending any further developments,
11 we'll continue this hearing. And I appreciate
12 everyone's time today. And the hearing is
13 adjourned. Thank you.

14 ***(Whereupon the hearing was adjourned***
15 ***at 10:28 a.m.)***

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