

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DE 21-077**

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

**2021 Energy Service Solicitation**

**Order Requiring Reconciliation Adjustment of 2020 Renewable Portfolio  
Standard Compliance Costs and Initiating Further Investigation**

**ORDER NO. 26,582**

**February 18, 2022**

In this order, the Commission directs Eversource to implement a reconciliation adjustment in 2022, returning approximately \$1.6 million in costs incurred in 2020 to comply with New Hampshire's Renewable Portfolio Standard requirements to ratepayers through its default service charge. In addition, the Commission initiates an investigation to review New Hampshire's electric distribution utilities' practices for default service procurement and compliance with New Hampshire's Renewable Portfolio Standard.

**I. PROCEDURAL HISTORY**

On June 24, 2021, the Commission issued Order No. 26,491. In that Order, the Commission, among other things, directed Public Service Company of New Hampshire d/b/a Eversource Energy ("Eversource" or the "Company") and Staff of the Commission (now the "New Hampshire Department of Energy" or "Energy") to review Eversource's Renewable Portfolio Standard (RPS) compliance costs, and to present any adjustments to those costs to the Commission for review and adjudication in Eversource's December Energy Service filing.

On September 20, 2021, Energy filed a recommendation that, among other things, recommended that the Commission disallow approximately \$1.6 million in RPS

compliance costs due to purchases of Class III renewable energy certificates (RECs)<sup>1</sup> at prices above the alternative compliance payment (ACP).

On October 7, 2021, Eversource filed a Motion for Removal of the Issue of Recovery of \$1.6 Million in REC Purchases and RPS Compliance. Accompanying its motion, Eversource filed the pre-filed direct testimony of James G. Daley, James R. Shuckerow, and Frederick B. White. On October 8, Eversource filed an updated version of the same filing.

On October 11, 2021, the Office of the Consumer Advocate (OCA) filed a letter of participation in this matter.

On October 14, 2021, Energy filed a response to Eversource's motion for removal of issue. In its response, Energy conditionally did not object to removing the reconciliation adjustment issue from a hearing on Eversource's December Energy Service filing, and otherwise objected to the merits of Eversource's motion.

On November 12, 2021, the Commission issued a procedural order, removing the reconciliation adjustment issue from the hearing on Eversource's December Energy Service filing, and scheduling a separate hearing on the reconciliation adjustment issue on January 13, 2022.

On January 13, 2022, the Commission held a hearing on the reconciliation adjustment issue as scheduled. Eversource presented witnesses James Daley, James Shuckerow, Frederick White and Erica Menard; Energy presented Stephen Eckberg as a witness.

Energy's recommendation, Eversource's motion, and related docket filings, other than any information for which confidential treatment is requested of or granted

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<sup>1</sup> Class III RECs are associated with electric energy produced by eligible biomass and landfill gas sources.

by the Commission, are posted at:

<https://www.puc.nh.gov/Regulatory/Docketbk/2021/21-077.html>.

## **II. SUMMARY OF ENERGY'S SEPTEMBER 21, 2021 RECOMMENDATION**

The Department of Energy recommended that the Commission order a reconciliation adjustment disallowing recovery of \$1,592,755 due to Eversource's purchases of Class III RECs above the ACP rate. According to Energy, Eversource is required to comply with New Hampshire's RPS requirements under RSA 362-F:3, and that RSA 362-F:10, II places an effective price cap on compliance costs at the ACP rate. Energy posited that any purchase of RECs at a cost above the ACP rate is *per se* imprudent, and that if a utility purchases RECs for a price above the ACP rate, the difference between the ACP rate and the cost per REC should not be recovered from ratepayers.

Energy went on to identify two transactions by Eversource in 2020 for Class III RECs where the costs exceeded the applicable ACP rate of \$34.54 per REC. Those transactions were for 69,500 Class III RECs at \$54.03 per REC and 15,000 Class III RECs at \$50.42 per REC. According to Energy, this resulted in \$1,592,755 in costs above the ACP rate that should not be borne by ratepayers.

## **III. POSITIONS OF THE PARTIES**

### **a. Eversource**

Eversource requested that no adjustment be made to its 2020 RPS reconciliation. Eversource disagreed with the premise that any REC purchase at a price above the statutory ACP is *per se* imprudent, arguing that a prudence determination under the traditional standards should be made. Eversource identified several factors that support its recovery of the costs at issue in this proceeding under the traditional prudence standard, including: 1) that legislation raising the ACP rate to

\$55 per Class III REC for 2020 compliance had passed both chambers of the New Hampshire General Court at the time the purchases were committed to; 2) a similar legislative adjustment had been made in prior years, making it a routine occurrence; 3) Eversource utilizes a market-based REC purchasing strategy to ensure it does not overpay for RECs; 4) Eversource's market-based purchasing strategy has netted ratepayers over \$20 million dollars in savings as compared to ACP prices between 2017 and 2020, resulting in overall stability and savings for customers; 5) that the statutory standard under RSA 362-F:10, II is permissive, not mandatory, meaning there can be no *per se* rule; 6) that Eversource's purchasing schedule for RECs is spread out over the course of the year to mitigate price risk, and that waiting until the end of the year to decide whether to purchase RECs or pay ACPs would result in higher overall costs to ratepayers; and 7) that Eversource's purchasing strategy is consistent with the settlement agreement approved by Commission Order No. 25,290.

Eversource stated that it receives no benefit for good performance associated with or tied to cost savings based on its performance managing its market-based REC purchasing strategy. Therefore, Eversource argued that being subject to imprudence determinations based on its market-based strategy exposes the Company to risk associated with its efforts to save ratepayers money on RPS compliance, and that it should not be exposed to risk without any chance at reward. Eversource requested that, if a disallowance results from this proceeding, it should be allowed to comply with the RPS through a competitive solicitation bundled with default service, entirely through ACPs, or other means that shift risk from RPS compliance obligations to the competitive supply market.

**b. Department of Energy**

Energy requested the Commission order its recommended reconciliation adjustment in the amount of \$1,592,755 for effect in Eversource's next Energy Service rate filing. According to Energy, a regulated utility should never purchase RECs over the ACP, arguing that the ACP is a purchase price cap. Energy argued that any potential changes to how Eversource procures RECs should be made in a separate docket.

**c. Office of Consumer Advocate**

The OCA supported Energy's position that the REC purchases in question were *per se* imprudent. The OCA noted that ACPs can only be made after the close of a compliance year, meaning that legislative changes were not retroactive, and that even under a prudence standard, the Company did not make a prudent decision. The OCA also refuted the argument that Eversource does not attain any benefits from its REC purchasing process, noting that the Company exercises control over default energy service rates, which in turn minimizes customer migration.

**IV. COMMISSION ANALYSIS**

Eversource is required by statute<sup>2</sup> and agreement<sup>3</sup> to manage default service RPS obligations prudently and in a manner consistent with New Hampshire's other electric distribution utilities. Additionally, we note that RSA 374-F:3, V(c) provides that default service should be procured through the competitive market.

Energy argued that two specific transactions were *per se* imprudent under RSA 362-F:10, II, placing emphasis on the statutory provision stating "if, and to the extent

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<sup>2</sup> See RSA 374-F:3, V(c) ("Any prudently incurred costs arising from compliance with the renewable portfolio standards of RSA 362-F for default service or purchased power agreements shall be recovered through the default service charge.")

<sup>3</sup> See Settlement Agreement in Docket No. DE 17-113, Section II, H, page 7 ("... Eversource will manage its RPS obligation in a manner consistent with Commission precedent for other regulated electric utilities in New Hampshire.")

sufficient certificates are not otherwise available at a price below the amounts specified in this paragraph.” In response, Eversource argued that the legislature made this provision permissive through the use of the word “may” later in the sentence.

Although we generally agree with Energy and the OCA’s characterization of ACP’s as a price cap, we decline to decide this matter based on a *per se* legal standard. Instead, we resolve the matter under the prudence standard, as is suggested by RSA 374-F:3, V(c). “In the language of the law, prudence is commonly associated with diligence and contrasted with negligence.” *Utility Property Tax Abatements and Limitation of Expenses*, Order No. 21,712 (1995); see also *Appeal of Conservation Law Foundation*, 127 N.H. 606, 637 (1986) (prudence review “requires the exclusion from rate base of costs that should have been foreseen as wasteful) (citations omitted); *Duquesne Light Co. v. Barasch*, 488 U.S. 299 (1989) (tracing history of prudence principle in cost-of-service ratemaking). Thus, “[a] prudence review, as we understand the concept, involves an after-the-fact review of investment decisions, in light of actual performance, but limited to what was reasonably foreseeable at the time of the decisions.” *Public Service Company of New Hampshire*, Order No. 24,276 at 69 (February 6, 2004). In this matter, we find legislative and regulatory support to apply a prudence standard to a category of costs that, to an electric distribution utility, are passed through to a subset of customers who do not elect to participate in the competitive market for energy supply.

Here, salient facts relevant to our analysis include: 1) on July 15, 2020, the statutory ACP for Class III RECs was \$34.54 per REC; 2) on July 15, 2020, both chambers of the New Hampshire General Court had passed legislation increasing the ACP for Class III RECs to \$55 per REC (HB 1234); 3) on July 15, 2020 Eversource entered into contracts with two entities, agreeing to purchase 69,500 Class III RECs at

an average cost of \$54.03 per REC and 15,000 Class III RECs at an average cost \$50.42 per REC; and 4) on July 28, 2020 HB 1234 was vetoed by the Governor, a veto that was not subsequently overridden by the New Hampshire General Court.

Based on these facts, as well as responses from Company witnesses during cross examination and re-direct examination at hearing, it is clear that the Company knowingly entered into contracts at a cost per REC above the then-current statutory ACP rate. Hearing Transcript of January 13, 2022 at 76, 141. Eversource made the decision to commit itself to pay more than the statutorily enacted ACP, assuming the ACP would change.

Furthermore, at the time of the REC purchase decision in July 2020, the Company faced two possible scenarios relating to the potential cost of RPS compliance on July 1<sup>st</sup>, 2021: either an ACP of \$34.54 or an ACP of \$55.00 per REC. Focusing on adverse outcomes, Eversource faced two discrete possibilities:

(1) the Company could base its decision on the existing ACP at the time of the purchase, but on July 1<sup>st</sup>, 2021 encounter an ACP of \$55 per REC upon HB 1234 becoming law; or

(2) the Company could assume the ACP would change to \$55 per REC, but on July 1<sup>st</sup>, 2021 encounter an ACP of \$34.54 upon HB 1234 not becoming law.

In the first situation, the Company would proceed without making the REC purchases at the current market prices and face a downside risk of approximately \$136,000. In the second situation, the Company would purchase the RECs at market prices, and face a downside risk of \$1.6 million. This risk analysis indicates that the first scenario provided a substantially lower risk option to the Company and its default service customers.

Therefore, we find that it was unreasonable and imprudent for Eversource to have consummated the two Class III REC transactions at issue at the time that it did, based on the information considered by the Company at that time. We can come to no other conclusion than a determination that the Company's purchase of RECs at a cost significantly above the statutory ACP of \$34.54 per Class III REC was imprudent.

Eversource is therefore directed to implement a reconciliation adjustment consisting of a credit to default service customers in the amount of \$1,592,755 through the RPS reconciliation adjustment factor in its next energy service filing.

Lastly, we address the remaining issue of Eversource's request that, if costs are found to be imprudent, consideration of changes to its role as the electric distribution utility in meeting RPS requirements associated with default service load are warranted. We agree that New Hampshire's regulated utilities' role in RPS compliance on behalf of default service customers is ripe for further review. We will therefore open a new investigative docket to examine: 1) the role of regulated electric distribution utilities in RPS compliance; 2) whether the utilities achieve RPS compliance in a consistent manner; 3) whether the electric distribution utilities incur consistent and reasonable administrative costs associated with the RPS compliance for default service customers; and 4) whether the costs incurred for RPS compliance for default service customers by regulated electric distribution utilities are market-based.

**Based upon the foregoing, it is hereby**

**ORDERED**, that Eversource shall implement a reconciliation adjustment, consisting of a credit to default service customers in the amount of \$1,592,755, in its next energy service filing; and it is

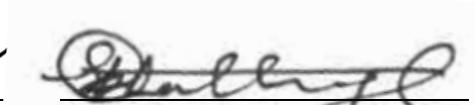
**FURTHER ORDERED**, that a new investigatory docket shall be opened as discussed herein.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of February, 2022.



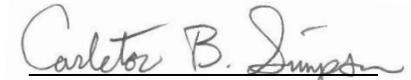
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Daniel C. Goldner  
Chairman



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Pradip K. Chattopadhyay  
Commissioner



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Carleton B. Simpson  
Commissioner

## Service List - Docket Related

Docket# : 21-077

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