

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 19-142

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

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

SUPPLEMENTAL ORDER OF NOTICE

On December 5, 2018, the Commission issued Order No. 26,198 (Order) amending its earlier Order No. 25,213 (April 18, 2011) (Original Order). The Original Order approved, with conditions, a power purchase agreement (PPA) between Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource or the Company) and Laidlaw Berlin BioPower, LLC, now Berlin Station, LLC (Berlin Station). The PPA requires Eversource to purchase electric power, including energy, capacity, and the associated renewable energy certificates, at agreed prices for a 20-year term.

If the energy prices in the PPA are higher than market prices, the calculation becomes a cumulative reduction on the purchase price of the facility, known as the cumulative reduction factor (CRF). PPA at 11. Pursuant to the Original Order, a \$100 million cap was imposed on the CRF such that, if and when the accumulated CRF account exceeded \$100 million, the overage paid above the cap would be credited to energy service customers in the following year's energy service rates. Order No. 25,213 at 97.

On June 28, 2018, Governor Sununu signed into law Senate Bill 577, 2018 N.H. Laws, ch. 340 (SB 577). The New Hampshire Legislature found that the "continued operation of the Burgess BioPower plant in Berlin is important to the energy infrastructure of the state of New Hampshire and important for the attainment of renewable energy portfolio standard goals of fuel

diversity, capacity, and sustainability.” *Id.* Section 2 of SB 577 directed the Commission to “amend its Order No. 25,213 (Docket 10-195) to suspend the operation of the cap on the cumulative reduction factor as set forth on page 97 of its Order for a period of 3 years from the date the operation of the cap would have otherwise taken effect.” 2018 N.H. Laws, ch. 340:2.

As directed by statute, the Commission amended the Original Order to suspend the operation of the cap for three years from the date on which the cumulative amount reaches \$100 million. Order No. 26,198 at 9. On August 30, 2019, the Commission issued an Order of Notice opening this docket to consider “whether, and if so under what rate recovery mechanism, Eversource may recover from ratepayers the over-market costs of electric energy purchased under the PPA with Berlin Station in excess of the \$100 million cap while operation of the cap is suspended.” Order of Notice at 2-3.

On November 19, 2019, Eversource filed an amendment to its PPA with Berlin Station together with a motion requesting that the Commission approve the amendment accompanied by testimony from Frederick B. White. On November 26, the Office of the Consumer Advocate (OCA) filed an opposition to the motion and on December 5, Berlin Station filed a motion to strike portions of the OCA opposition.

This Supplemental Order of Notice and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, will be posted at <http://www.puc.nh.gov/Regulatory/Docketbk/2019/19-142.html>.

In addition to the issues already noticed in the original Order of Notice, the Eversource motion raises, *inter alia*, issues related to the appropriate legal standard for the Commission’s review of the proposed PPA amendment, and whether the books and records of Berlin Station should be considered as part of the review of the proposed PPA amendment, or as a basis for cost

recovery of over-market costs by Eversource, including but not limited to the effect of SB 577, RSA Chapter 374-F, RSA 362-F:9, and RSA 374:57. Each party has the right to have an attorney represent the party at the party's own expense.

Based upon the foregoing, it is hereby

ORDERED, that parties are invited to file briefs on the appropriate legal standard governing the Commission's review of the proposed amendment to the PPA, on the appropriate legal standard for the Commission's review of the request for recovery of over-market costs of the PPA to Eversource while operation of the cap is suspended, and on the relevance of the books and records of Berlin Station to applicable legal standards. Briefs shall be filed with the Commission by the close of business on January 2, 2020, and reply briefs shall be filed by the close of business on January 7, 2020.

FURTHER ORDERED, that a Prehearing Conference, pursuant to N.H. Admin. R., Puc 203.15, be held before the Commission located at 21 S. Fruit St., Suite 10, Concord, New Hampshire, on January 9, 2020, at 10:00 a.m. At the Prehearing Conference, each party will provide a preliminary statement of its position with regard to the motion, present legal argument concerning whether the facility's books and records are relevant to the applicable legal standards for the Commission's review, and address any of the issues set forth in N.H. Admin. R., Puc 203.15; and it is

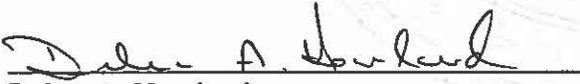
FURTHER ORDERED, that, immediately following the Prehearing Conference, Eversource, Berlin Station, the Staff of the Commission, and any Intervenors, hold a Technical Session to review the motion and to agree on a discovery schedule to recommend for this proceeding; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. R., Puc 203.12, the Executive Director shall notify all persons desiring to be heard at this hearing by publishing a copy of this Order of Notice no later than December 16, 2019, on the Commission's website and by electronic service to the parties to the following Commission Dockets: DE 19-142, DE 14-238, and DE 10-195, no later than December 16, 2019; and it is

FURTHER ORDERED, that consistent with N.H. Admin. R., Puc 203.17 and Puc 203.02, any party seeking to intervene in the proceeding shall submit to the Commission seven copies of a Petition to Intervene with copies sent to Eversource and the Office of the Consumer Advocate on or before December 31, 2019, such Petition stating the facts demonstrating how its rights, duties, privileges, immunities, or other substantial interests may be affected by the proceeding, consistent with N.H. Admin. R., Puc 203.17;

FURTHER ORDERED, that any party objecting to a Petition to Intervene make said Objection on or before January 3, 2020.

By order of the Public Utilities Commission of New Hampshire this twelfth day of December, 2019.


Debra A. Howland
Executive Director

Individuals needing assistance or auxiliary communication aids due to sensory impairment or other disability should contact the Americans with Disabilities Act Coordinator, NHPUC, 21 S. Fruit St., Suite 10, Concord, New Hampshire 03301-2429; 603-271-2431; TDD Access: Relay N.H. 1-800-735-2964. Notification of the need for assistance should be made one week prior to the scheduled event.

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