IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
BURGESS BIOPOWER, LLC, *et al.*,[1]	:	Case No. 24-10235 (LSS)
	:	(Jointly Administered)
Debtors.	:	
	:	**Re: D.I. 18 & 44**
	:	**Hearing Date: February 21, 2024 at 9:30am. (ET)**

MOTION OF THE DEBTORS FOR LEAVE TO FILE DEBTORS' REPLY IN RESPONSE TO THE OBJECTION OF PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE TO DEBTORS' MOTION FOR INTERIM AND FINAL ORDERS (I) APPROVING ENTRY INTO NEW LEAD MARKET PARTICIPANT AGREEMENT AND (II) GRANTING RELATED RELIEF

The debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors"), by and through their counsel, submit this motion (the "Motion for Leave") for entry of an order, substantially in the form attached hereto as **Exhibit 1**, granting the Debtors leave to file a reply (the "Reply") in support of the *Debtors' Motion for Interim and Final Orders (I) Approving Entry Into New Lead Market Participant Agreement and (II) Granting Related Relief* [D.I. 18] (the "Motion") and in response to the *Objection of Public Service Company of New Hampshire to Debtors' Motion for Interim and Final Orders (I) Approving Entry Into New Lead Market Participant Agreement and (II) Granting Related Relief* [D.I. 44] (the "Objection"). A copy of the Reply is attached hereto as **Exhibit 2**. In support of the Motion for Leave, the Debtors respectfully state as follows:

[1] The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number are: Burgess BioPower, LLC (0971) and Berlin Station, LLC (1913). The Debtors' corporate headquarters are located at c/o CS Operations, Inc., 631 US Hwy 1, #300, North Palm Beach, FL 33408.

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider and determine the Motion for Leave pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding within the meaning of 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief sought herein are section 105(a) of title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the "Bankruptcy Code"), and Rule 9006-1(d) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules").

3. Pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final order or judgment with respect to the Motion for Leave if it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

BACKGROUND

1. On February 9, 2024, (the "Petition Date"), the Debtors commenced the above-captioned chapter 11 cases (the "Chapter 11 Cases") by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code with the Court.

2. The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession, pursuant to Bankruptcy Code sections 1107(a) and 1108. As of the date of the Motion for Leave, no trustee, examiner, or statutory committee has been appointed in the Chapter 11 Cases.

3. The Debtors filed the Motion on the Petition Date.

4. On February 12, 2024, Public Service Company of New Hampshire, doing business as Eversource Energy ("Eversource") filed the Objection.

5. On February 13, 2024, the Court held a hearing (the "First Day Hearing") on the motions that the Debtors filed on the Petition Date (the "First Day Motions"), including the Motion. At the First Day Hearing, the Court set a further hearing (the "Hearing") on the First Day Motions, including the Motion, as well as the *Motion of the Debtors for Entry of an Order (I) Authorizing the Debtors to Reject the Power Purchase Agreement and Option Agreement with Public Service Company of New Hampshire (d/b/a Eversource Energy) Nunc Pro Tunc to the Petition Date and (II) Granting Related Relief* [D.I. 22] (the "Rejection Motion") and the *Motion of Public Service Company of New Hampshire, Pursuant to 28 U.S.C. § 1412 and Federal Rule of Bankruptcy Procedure 1014(a), To Transfer Venue of Bankruptcy Proceedings to United States Bankruptcy Court for the District of New Hampshire* [D.I. 39] (the "Venue Motion") filed by Eversource for February 21, 2024 at 9:30 a.m. (ET) and established an objection deadline for the First Day Motions, the Rejection Motion and the Venue Motion as February 20, 2024 at 12:00 p.m. (ET).

RELIEF REQUESTED AND BASIS FOR RELIEF

6. By this Motion for Leave, the Debtors respectfully Request entry of the Proposed Order granting the Debtors leave to file a late Reply in support of the Motion and in response to the Objection on or before February 20, 2024 at 1:00 p.m. (ET).

7. Local Rule 9029-3 provides that "Delaware Counsel shall file the agenda in the bankruptcy case . . . with the Bankruptcy Court on or before 12:00 p.m. prevailing Eastern Time two (2) business days before the date of the hearing." Due to the intervening Federal holiday, the deadline to file the agenda for the Hearing was Friday, February 16, 2024, at 12:00 p.m. (ET).

8. Pursuant to Local Rule 9006-1(d), "reply papers . . . may be filed and, if filed, shall be served so as to be received by 4:00 p.m. prevailing Eastern Time the day prior to the deadline for filing the agenda." Accordingly, pursuant to Local Rule 9006-1(d), the deadline for the Debtors to file a Reply (the "Reply Deadline") was 4:00 p.m. on Thursday, February 15, 2024, two days after the First Day Hearing.

9. The Debtors have expended a significant amount of time and resources, working to respond to the Objection, the Venue Motion and other objections filed by Eversource. The Debtors also have worked extensively and cooperatively with its lenders and other parties in interest to address various concerns and requests made on an informal basis to certain of the First Day Motions.

10. The Debtors seek to submit the Reply in support of the Motion and in response to various factual and legal arguments asserted in the Objection. Among other things, the Reply sets forth the reasons why the Objection, to the extent it remains unresolved by the hearing, should be overruled and the Motion should be granted. Accordingly, the Debtors submit that the Reply will assist the Court in its consideration of the Motion and the Objection and no parties will be prejudiced by the filing of a late Reply.

NOTICE

11. Notice of the Motion has been provided to (a) the U.S. Trustee (Attn: Jane M. Leamy); (b) the holders of the twenty (20) largest unsecured claims against each Debtor; (c) counsel to Deutsche Bank Trust Company Americas in its capacity as Collateral Agent, Hogan Lovells LLP; (d) counsel to the DIP Lenders and the Senior Secured Noteholders, Greenberg Traurig, LLP; (e) Berlin Biopower Investment Fund, LLC, with a copy to Murray Plumb & Murray; (f) Greenline CDF Subfund XVIII LLC, with a copy to Kutak Rock LLP, U.S. Bancorp

Community Development Corporation and Leverage Law Group, LLC; (g) Public Service of New Hampshire d/b/a Eversource Energy, with a copy to Hunton Andrews Kurth LLP; (h) the United States Attorney's Office for the District of Delaware; (i) the United States Attorney's Office for the District of New Hampshire; (j) the United States Environmental Protection Agency; (k) the Nuclear Regulatory Commission; (l) the United States Department of Energy; (m) the Federal Energy Regulatory Commission; (n) New Hampshire Department of Environmental Services; (o) New Hampshire Public Utilities Commission; (p) New Hampshire Site Evaluation Committee; (q) New Hampshire Department of Energy; (r) City of Berlin; (s) ISO New England, Inc.; (t) the United States Securities and Exchange Commission; (u) the Internal Revenue Service; (v) CS Operations; (w) CS Berlin Ops; and (y) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors respectfully submit that no further notice of this Motion for Leave need be provided.

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Order, substantially in the form attached hereto as **Exhibit 1**, granting the Debtors leave and permission to file the Reply after the Reply Deadline and such other and further relief as the Court deems just and proper.

Dated: February 20, 2024

/s/ Chantelle D. McClamb
Chantelle D. McClamb (No. 5978)
GIBBONS P.C.
300 Delaware Avenue, Suite 1015
Wilmington, Delaware 19801
Telephone: (302) 518-6300
E-mail: cmcclamb@gibbonslaw.com

-and-

Robert K. Malone (admitted *pro hac vice*)
Alison D. Bauer (admitted *pro hac vice*)
William F. Gray, Jr. (admitted *pro hac vice*)
Benjamin Weissman (admitted *pro hac vice*)
Jiun-Wen Bob Teoh (admitted *pro hac vice*)
FOLEY HOAG LLP
1301 Avenue of the Americas, 25th Floor
New York, New York 10019
Telephone: (212) 812-0400
Email: abauer@foleyhoag.com
wgray@foleyhoag.com
bweissman@foleyhoag.com

Kyle P. McEvilly (admitted *pro hac vice*)
GIBBONS P.C.
One Gateway Center
Newark, New Jersey 07102
Telephone: (973) 596-4500
E-mail: rmalone@gibbonslaw.com
kmcevilly@gibbsonlaw.com

Proposed Co-Counsel for Debtors Burgess BioPower, LLC and Berlin Station, LLC

jteoh@foleyhoag.com

-and-

Kenneth S. Leonetti (admitted *pro hac vice*)
Jonathan Bard (admitted *pro hac vice*)
FOLEY HOAG LLP
155 Seaport Boulevard
Boston, Massachusetts 02210
Telephone: (617) 832-1000
Email: ksl@foleyhoag.com
jbard@foleyhoag.com

Proposed Co-Counsel for Debtors Burgess BioPower, LLC and Berlin Station, LLC

EXHIBIT 1

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
BURGESS BIOPOWER, LLC, *et al.*,[1]	:	Case No. 24-10235 (LSS) (Jointly Administered)
Debtors.	:	**Re: D.I. 18 & 44**

ORDER GRANTING THE DEBTORS LEAVE TO FILE DEBTORS' REPLY IN RESPONSE TO THE OBJECTION OF PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE TO DEBTORS' MOTION FOR INTERIM AND FINAL ORDERS (I) APPROVING ENTRY INTO NEW LEAD MARKET PARTICIPANT AGREEMENT AND (II) GRANTING RELATED RELIEF

Upon the *Motion of the Debtors for Leave to File Debtors' Reply in Response to the Objection of Public Service Company of New Hampshire to Debtors' Motion for Interim and Final Orders (I) Approving Entry Into New Lead Market Participant Agreement and (II) Granting Related Relief* (the "Motion for Leave");[2] and due and proper notice of the Motion for Leave having been given; and it appearing that no other or further notice of the Motion for Leave is required; and it appearing that this Court has jurisdiction to consider the Motion for Leave in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and the Motion for Leave is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that the relief requested in the Motion for Leave and provided for herein is

[1] The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number are: Burgess BioPower, LLC (0971) and Berlin Station, LLC (1913). The Debtors' corporate headquarters are located at c/o CS Operations, Inc., 631 US Hwy 1, #300, North Palm Beach, FL 33408.

[2] Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion for Leave.

in the best interest of the Debtors, their estates and creditors and other parties in interest; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.

2. Pursuant to Local Rule 9006-1(d), the Debtors are granted leave and permission to file the Reply, and the Reply is deemed timely filed and a matter of record in these bankruptcy cases.

3. This Court shall retain jurisdiction to interpret and enforce this Order.

EXHIBIT 2

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
BURGESS BIOPOWER, LLC, *et al.*,[1]	:	Case No. 24-10235 (LSS) (Jointly Administered)
Debtors.	:	**Re: D.I. 18 & 44** **Hearing Date: February 21, 2024 at 9:30am. (ET)**

DEBTORS' REPLY IN RESPONSE TO THE OBJECTION OF PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE TO DEBTORS' MOTION FOR INTERIM AND FINAL ORDERS (I) APPROVING ENTRY INTO NEW LEAD MARKET PARTICIPANT AGREEMENT AND (II) GRANTING RELATED RELIEF

Burgess BioPower, LLC ("Burgess") and Berlin Station, LLC ("Berlin"), the debtors and debtors in possession in the above captioned cases (collectively, the "Debtors"), by and through their co-counsel, submit this reply in response to the *Objection of Public Service Company of New Hampshire to Debtors' Motion for Interim and Final Orders (I) Approving Entry Into New Lead Market Participant Agreement and (II) Granting Related Relief* [D.I. 44] (the "Objection"), and in further support of the *Debtors' Motion for Interim and Final Orders (I) Approving Entry Into New Lead Market Participant Agreement and (II) Granting Related Relief* [D.I. 18] (the "Motion"), in the above captioned chapter 11 cases. The Debtors respectfully state as follows:

[1] The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number are: Burgess BioPower, LLC (0971) and Berlin Station, LLC (1913). The Debtors' corporate headquarters are located at c/o CS Operations, Inc., 631 US Hwy 1, #300, North Palm Beach, FL 33408.

INTRODUCTION

1. It is undisputed that the Debtors' finances are in dire straits. And it is undisputed that, without the ability to collect revenues from power generation post-petition, Debtors will be forced to shutter the Facility.[2]

2. The Debtors bring the Motion to have a chance to preserve the Debtors' business and keep operating, for the benefit of the Debtors' creditors and to give the reorganization a chance at success.

3. By this Motion, Debtors seek interim and final relief enabling them to enter into a new Lead Market Participant services agreement. Contrary to the Objection by Public Service Company of New Hampshire d/b/a Eversource Energy ("Eversource"), granting the requested interim relief does not require the Court to rule on whether Eversource materially breached the PPA or whether Debtors validly terminated the PPA. Instead, the Motion seeks, on an interim basis, an order: (i) authorizing Debtors to enter into an agreement with CS Berlin Ops. pursuant to which CS Berlin Ops. would serve as the Lead Market Participation for Berlin Station; (ii) compelling Eversource to initiate the ministerial tasks required to transfer the Lead Market Participant designation to CS Berlin Ops.; and (iii) requiring Eversource to hold all funds collected as the Debtors' Lead Market Participant in a segregated account pending further order of this Court.

4. In its Objection, Eversource conflates the role of the Lead Market Participant, which is a ministerial role that enables the Debtors to participate in ISO-NE's energy and capacity markets, with Eversource's rights under the PPA to purchase all of the Energy and Capacity that Debtors produce. The relief Debtors' Motion seeks is a change to the Lead Market Participant

---

[2] Capitalized terms not defined herein shall have the meaning assigned them in the Motion.

role. If it is ultimately determined that the PPA is neither rejected nor terminated, Eversource's rights to purchase Debtors' Energy and Capacity will be unaffected by the Debtors having a new Lead Market Participant. Put differently, to whom Debtors choose to sell their power should not be (and is not) determined by their Lead Market Participant; unless of course Eversource refuses to relinquish that role in an effort to starve Debtors' business and any possibility of a successful reorganization.

5. Because, as discussed below, the Debtors have established that entering into a new Lead Market Participant services agreement is a sound exercise of the Debtors' business judgment and the ministerial tasks required of Eversource are necessary to effectuate that relief, the Motion should be granted.

ARGUMENT

I. A New Lead Market Participant Is Necessary to Allow the Debtors to Continue to Operate Post-Petition

6. The Debtors established in the Motion that they cannot collect revenues for the sale of their energy and capacity into the market—including to Eversource—without a cooperative Lead Market Participant. The Debtors' Motion also established that the Debtors will suffer material revenue loss if they are unable to proceed immediately to the ISO-NE markets for energy and capacity with a new Lead Market Participant.

7. Entering into a new Lead Market Participant services agreement is an action taken in the Debtors' ordinary course of business, as the Debtors cannot realistically sell their products without doing so. Entering into a new Lead Market Participant services agreement is also squarely within the Debtors' "sound exercise of business judgment" as required by 11 U.S.C. § 363(b). *In re Elpida Memory, Inc.*, No. 12-10947 (CSS), 2012 Bankr. LEXIS 5367, at *18 (Bankr. D. Del. Nov. 16, 2012); *see also In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del.

1999). As a result, the Motion established that the Court may, pursuant to 11 U.S.C. § 363(b), authorize the Debtors to enter into a new Lead Market Participant services agreement. Eversource does not dispute, or even discuss, the Debtors' entitlement under Section 363(b) to such an order. Nor could it, given the Debtors' undisputed, immediate need to generate and collect revenues going forward.

8. Instead, the Objection attacks the ancillary relief sought by the Motion: compelling Eversource to initiate the transfer of the Lead Market Participant designation. That relief is "necessary" and "appropriate" to carry out the Court's order under Section 363(b) of the Code, and is thus warranted and appropriate here. 11 U.S.C. § 105(a).

9. First, the Motion established, and Eversource does not dispute, that there are two ministerial tasks that only Eversource can perform in order to effectuate a new Lead Market Participant: initiation of the transfer for the Debtors' energy asset on ISO-NE's Customer Asset Management System ("CAMS"), and execution of a fillable portable document format ("Fillable PDF") for the Debtors' capacity asset. Those ministerial tasks are required to effectuate the transfer of Lead Market Participant, and no one besides Eversource can accomplish those tasks.

10. Second, the Motion established that, unless Eversource is ordered to undertake these two tasks, Eversource will remain the Debtors' Lead Market Participant and the Debtors will be unable to collect revenues for the sale of their energy and capacity into ISO-NE markets.

11. It is not an exaggeration to say that the Motion seeks existential relief. Without the ability to generate and collect revenues by selling their products into the market, the Debtors' business is dead in the water.

II. <u>Eversource's Objections Are All Red Herrings</u>

12. Eversource's Objection raises a number of arguments that, apart from being incorrect, have no bearing on the Motion and the requested relief.

A. The Relief Sought Is Properly Made by Motion

13. Eversource first objects that the Debtors should have proceeded by adversary proceeding instead of by motion. This formalistic argument misses the mark. Bankruptcy Rule 6003(b) explicitly provides that, as they have done here, the Debtors may seek interim and final relief by motion "to use, sell, lease, or otherwise incur an obligation regarding the property of the estate." The Motion established, and Eversource does not seriously dispute, that the estates would suffer immediate and irreparable harm if they are unable to collect revenues for the power they generate.

14. The cases cited by Eversource are nothing like the Debtors' predicament here and do not address a request under 11 U.S.C. § 363(b). The debtor in *In re Conxus Communications* had "waited until the eleventh hour to pursue its request for an injunction" and the "exigent circumstances … were, in large part, of [debtor's] own making." 262 B.R. 893, 899 (D. Del. 2001). Here, by contrast, the Debtors' filed the Motion on the Petition Date and their immediate need for revenue was created in part by Eversource's unexpected (and wrongful) withholding of payment for RECs and Capacity in the weeks before the Petition Date. *In re Best Products Co.*, 203 B.R. 51 (Bankr. E.D. Va. 1996) is likewise inapposite. There, the court was deciding whether it was appropriate to issue an injunction providing adequate assurance to utility companies under 11 U.S.C. § 366. *Id.* at 54.

15. Further, contrary to Eversource's assertions, the Motion does not seek a "declaratory judgment that the PPA has been terminated." Objection ¶ 23.

16. Eversource will not be harmed by interim relief. If Debtors sell their power into the market with a new Lead Market Participant and collect revenues, and it is later determined that the PPA was not breached and terminated (or rejected), then Eversource may have a claim for breach of the PPA against the Debtors' estates. A breach of the unspecified "rights and obligations" Eversource has as the current Lead Market Participant can be remedied by money damages as part of the claims process down the line. By contrast, without the interim relief, it is a near certainty that Debtors will suffer irreparable harm, including but not limited to closing their doors and entering chapter 7.

B. The Motion Need Not Be Arbitrated

17. Eversource's next objection is that the parties' disputes as to whether Eversource materially breached the PPA and whether Debtors validly terminated the PPA are subject to mandatory arbitration. But, again, the requested relief does not require the Court to resolve those disputes.

18. Further, no one has sought to enforce the arbitration provisions of the PPA. Neither Debtors nor Eversource has demanded arbitration (by this Motion or otherwise), let alone moved to compel (in this Court or anywhere) arbitration of any dispute. Eversource's straw man argument fails. As explained above, the Motion does not require the Court to resolve any disputed issues—including whether Eversource's failure to make the January REC payment was a material breach entitling Debtors to terminate the PPA—that may or may not be subject to arbitration.

19. Even if there were a ripe dispute arguably subject to the PPA's dispute resolution provisions (and there is not), the Court should retain jurisdiction over the Motion because the Motion arises out of the Bankruptcy Code and its arbitration "would conflict with the purposes of the Code." *Mintze v. Am. Fin. Servs., Inc. (In re Mintze)*, 434 F.3d 222, 231 (3d Cir. 2006)

(quotations omitted). "[A] principal purpose of the Bankruptcy Code is … to centralize disputes over the debtor's assets and obligations in one forum, thus protecting debtors and creditors from piecemeal litigation and conflicting judgments." *Moses v. CashCall, Inc.*, 781 F.3d 63, 72 (4th Cir. 2015). To determine whether to enforce an arbitration clause, the "key question … is whether there is an inherent conflict between arbitration and the underlying purposes of the [Bankruptcy] Code in relation to the particular dispute for which a party seeks to enforce an arbitration clause." *Johnson v. S.A.I.L. LLC (In re Johnson)*, 649 B.R. 735, 747 749-50 (Bankr. N.D. Ill. 2023). An inherent conflict exists where, as here, the Motion seeks authorization pursuant to 11 U.S.C. § 363(b) regarding operation of the Debtors' ongoing business. *See id.* at 752-53 (bankruptcy court retained jurisdiction over dispute involving allowance or disallowance of claims against the estate, including Debtors' efforts to get a "refund of all sums paid on the loan as well as punitive damages and an award of attorney's fees and costs"); *In re EPD Inv. Co. LLC*, 821 F.3d 1146, 1150 (9th Cir. 2016) (bankruptcy court properly retained jurisdiction over fraudulent conveyance, subordination, and disallowance causes of action); *Phillips v. Congelton, L.L.C. (In re White Mountain Mining Co., L.L.C.)*, 403 F.3d 164, 170 (4th Cir. 2005) (to prevent "piecemeal litigation," bankruptcy court properly retained jurisdiction over dispute of whether creditor's "advances to the debtor were debt or equity," because to allow such claim to be arbitrated would interfere with "debtor's ability to formulate a plan of reorganization"); *CashCall*, 781 F.3d at 72 (retaining jurisdiction over dispute as to whether a loan entered into by debtor was invalid because that determination "could directly impact claims against [the] estate and [the] plan for financial reorganization").[3]

[3] The Debtors reserve their rights to respond more fully to any arbitration demand and/or motion to compel arbitration if and when the issue becomes ripe.

20. Eversource's cited cases do not hold otherwise. *In re Mintze* confirmed that, where the particular causes of action derive from the Bankruptcy Code, a bankruptcy court may retain jurisdiction over an otherwise arbitrable dispute. *Mintze*, 434 F.3d at 231-32.

C. Were the Court to Reach the Issue, Debtors' Termination Was Clearly Valid

21. Eversource also objects to the Motion by arguing that it "has fully complied with the PPA." The Debtors dispute that assertion, and believe that the facts clearly establish the opposite. But in any event, the Motion's requested relief does not require the Court to make a final determination as to whether Eversource properly withheld the January REC and Capacity payments. Even if the PPA is not terminated or rejected,[4] whether or not the Debtors are authorized to enter into a new Lead Market Participant services agreement does not affect Eversource's right to purchase, and the Debtors' obligation to sell, Energy, Capacity and RECs pursuant to the PPA.

22. Notwithstanding that the Court need not rule on termination, Eversource's arguments that it did not breach (and thus that the Debtors were not entitled to terminate) are without merit. Section 6.1.4(c) gives Eversource the right to apply a "Monthly Energy Credit", *i.e.*, one-twelfth of the CRF Excess, "against amounts otherwise due for Energy." By its plain language, section 10.3 of the PPA allows the parties to "discharge mutual debts and payment obligations due and owing under [the PPA] and the Interconnection Agreement," under which Debtors might owe amounts to Eversource. Section 10.3 does not expand Eversource's right, created by section 6.1.4(c), to credit the CRF Excess against amounts otherwise due for Energy. Otherwise, section 10.3 would render superfluous section 6.1.4(c)'s right to a credit against Energy payments, which is literally referred to as a "Monthly Energy Credit." *See, e.g.*, *Miller v Sunapee Difference*, 918 F.3d 172, 178 (1st Cir. 2019) (New Hampshire law "disfavor[s] constructions that

---

[4] The Debtors have also moved, in an abundance of caution, for rejection of the PPA. *See* D.I. 22.

render contractual terms superfluous") (citing *Comm. Union Assurance Co. v. Brown Co.*, 120 A.2d 1111, 1113 (N.H. 1980).[5]

23. This plain reading of the PPA was uncontroversial and undisputed until Eversource's abrupt about-face in the days before the Debtors filed these cases. For more than a decade, and as recently as last month, Eversource has confirmed publicly and to the New Hampshire regulators that the PPA allowed Eversource to credit the CRF Excess only against amounts due for Energy. See, for example, Eversource's December 15, 2023 testimony before the NHPUC,[6] where Eversource representatives confirmed that, "Per the terms of the PPA, the excess cumulative reduction amount will be divided by 12 months (approximately $5.9 million per month) and applied against the monthly energy payments being made in accordance with the PPA for monthly energy output purchased, until the excess cumulative reduction amount is recovered. … Per the terms of the PPA, the procurement of Capacity and REC products will continue and payments will be made to Burgess, as the excess cumulative reduction amount calculation pertains only to the PPA's energy purchases." Ex. A at 15:13-16:5. On January 11, 2024,[7] Eversource representatives made the following unequivocal statements to NHPUC:

> [NHPUC] Chairman Goldner: But the only checks going to Burgess are in the – until [the CRF] is paid off, until the 70 million is paid

[5] Eversource's Objection asserts that "Section 6.1.4(c) simply prescribes the method for PSNH netting and recouping amounts owed for energy" without capitalizing the term "Energy," Objection ¶ 10, eliding the fact that that section applies specifically and only to payments due for "Energy," a capitalized term defined in the PPA, in the form of a "Monthly Energy Credit." PPA, § 6.1.4(c). Eversource's attempt to downplay the PPA's actual language should be rejected.

[6] The December 15, 2023 Direct Testimony of Yi-An Chen and Edward A. Davis is available on the NHPUC's website at https://www.puc.nh.gov/Regulatory/Docketbk/2023/23-091/MOTIONS-OBJECTIONS/23-091_2023-12-15_EVERSOURCE_TESTIMONY-CHEN-DAVIS.PDF. A true and correct copy of same is attached hereto as **Exhibit A**.

[7] The transcript of the January 11, 2024 proceedings before the NHPUC is available on the NHPUC's website at https://www.puc.nh.gov/Regulatory/Docketbk/2023/23-091/TRANSCRIPTS-OFFICIAL%20EXHIBITS-CLERKS%20REPORT/23-091_2024-01-17_TRANSCRIPT_01-11-24.PDF. A true and correct copy of same is attached hereto as **Exhibit B**.

> off, the only checks that go to Burgess are for RECs and for capacity?
>
> [Eversource representative] Bryant Robinson: Correct.
>
> * * *
>
> [Eversource counsel] David K. Wiesner: The Cumulative Reduction and the recoupment mechanism for the Excess Cumulative Reduction, which is the portion above 100 million, only applies to energy.
>
> [NHPUC] Chairman Goldner: Yes.
>
> [Eversource counsel] David K. Wiesner: And capacity and RECs are separate.
>
> [NHPUC] Chairman Goldner: One hundred percent, yes. Thank you.

Exhibit B at 35, 38-39.

24. The PPA provides that an Event of Default occurs upon the failure “to pay an amount due by the due date, and such failure is not remedied within seven (7) Business Days after notice by the other party.” PPA, § 12.1.1. Given that Eversource was not entitled to withhold the January REC or Capacity payments, it failed to “pay an amount due by the due date,” entitling the Debtors to terminate after Eversource’s failure to cure. PPA, § 12.2.1.

25. Eversource’s attempt to characterize its failure to pay a REC payment when due as a “billing dispute” is another attempt to delay the Debtors’ ability to generate and collect revenues by selling their power into the markets. The Court should reject Eversource’s cynical strategy to starve the Debtors’ business through litigation.[8]

[8] The Debtors reserve their rights to brief issues regarding Eversource’s material breach and the Debtors’ termination of the PPA if and when those issues become ripe.

CONCLUSION

26. For the reasons set forth in the Motion and herein, the Debtors respectfully ask this Court to overrule Eversource's Objection and grant the Motion and grant such other and further relief as may be just and proper, allowing the Debtors a chance at a successful reorganization.

Dated: February 20, 2024

/s/ Chantelle D. McClamb
Chantelle D. McClamb (No. 5978)
GIBBONS P.C.
300 Delaware Avenue, Suite 1015
Wilmington, Delaware 19801
Telephone: (302) 518-6300
E-mail: cmcclamb@gibbonslaw.com

-and-

Robert K. Malone (admitted *pro hac vice*)
Kyle P. McEvilly (admitted *pro hac vice*)
GIBBONS P.C.
One Gateway Center
Newark, New Jersey 07102
Telephone: (973) 596-4500
E-mail: rmalone@gibbonslaw.com
kmcevilly@gibbsonlaw.com

Proposed Co-Counsel for Debtors Burgess BioPower, LLC and Berlin Station, LLC

Alison D. Bauer (admitted *pro hac vice*)
William F. Gray, Jr. (admitted *pro hac vice*)
Benjamin Weissman (admitted *pro hac vice*)
Jiun-Wen Bob Teoh (admitted *pro hac vice*)
FOLEY HOAG LLP
1301 Avenue of the Americas, 25th Floor
New York, New York 10019
Telephone: (212) 812-0400
Email: abauer@foleyhoag.com
wgray@foleyhoag.com
bweissman@foleyhoag.com
jteoh@foleyhoag.com

-and-

Kenneth S. Leonetti (admitted *pro hac vice*)
Jonathan Bard (admitted *pro hac vice*)
FOLEY HOAG LLP
155 Seaport Boulevard
Boston, Massachusetts 02210
Telephone: (617) 832-1000
Email: ksl@foleyhoag.com
jbard@foleyhoag.com

Proposed Co-Counsel for Debtors Burgess BioPower, LLC and Berlin Station, LLC

EXHIBIT A

STATE OF NEW HAMPSHIRE

BEFORE THE PUBLIC UTILITIES COMMISSION

DIRECT TESTIMONY OF YI-AN CHEN AND EDWARD A. DAVIS

PETITION OF PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE d/b/a EVERSOURCE ENERGY PRELIMINARY REQUEST FOR CHANGE IN STRANDED COST RECOVERY CHARGE RATE FEBRUARY 1, 2024 THROUGH JANUARY 31, 2025

December 15, 2023

Docket No. DE 23-091

I. INTRODUCTION

Q. Ms. Chen, please state your name, business address and position.

A. My name is Yi-An Chen. My business address is 780 North Commercial Street, Manchester, New Hampshire. I am employed by Eversource Energy Service Company as the Director of Revenue Requirements for New Hampshire and in that position, I support Public Service Company of New Hampshire d/b/a Eversource Energy ("PSNH", "Eversource" or the "Company") regarding revenue and rate-related matters.

Q. Ms. Chen, please describe your educational and professional background.

A. I received a Bachelor of Business Administration in International Business degree from Soochow University in Taipei, Taiwan and Master's Degree in Business Administration from Clark University. I joined Eversource earlier this year, having more than 15 years of prior experience with National Grid USA in various roles of increasing responsibility including Regulatory and Compliance, Finance and Performance Management, Program and Project Management, and Reporting and Analysis.

Q. What are your responsibilities in your current position?

A. I am currently responsible for the coordination and implementation of revenue requirement calculations and regulatory filings for the Company, as well as the filings associated with PSNH's default Energy Service ("ES"), Stranded Cost Recovery Charge ("SCRC"), Transmission Cost Adjustment Mechanism ("TCAM"), System Benefits Charge ("SBC"), Regulatory Reconciliation Adjustment ("RRA") mechanism, Pole Purchase Adjustment Mechanism ("PPAM"), and Base Distribution Rates.

Q. Ms. Chen, have you previously testified before the New Hampshire Public Utilities Commission (the "Commission")?

A. Yes, I provided testimony before the Commission in support of the Company's Lost Base Revenue ("LBR") component filing of the SBC submitted in Docket No. DE 23-080, and most recently in the Energy Service filing in Docket No. DE 23-043.

Q. Mr. Davis, please state your name, business address and position.

A. My name is Edward A. Davis. My business address is 107 Selden Street, Berlin, Connecticut. My position is Director, Rates at Eversource Energy Service Company.

Q. Mr. Davis, what are your responsibilities in your current position?

A. In my position as Director of Rates at Eversource, I provide rate and tariff related services to the operating companies of Eversource Energy, including PSNH.

Q. Mr. Davis, please describe your educational and professional background.

A. I hold a Bachelor of Science degree in Electrical Engineering from the University of Hartford and Master of Business Administration from the University of Connecticut. I joined Northeast Utilities, now Eversource Energy, in 1979, and have held various positions in the areas of consumer economics, engineering and operations, wholesale and retail marketing and rate design, regulation and administration.

Q. Mr. Davis, have you previously testified before the Commission or other regulatory bodies?

A. Yes. I have on many occasions testified before the New Hampshire Public Utilities Commission on behalf of Eversource, as well as before the state utility commissions in Connecticut and Massachusetts on behalf of other Eversource Energy affiliates on rate-related matters.

Q. What is the purpose of your joint testimony?

A. The purpose of this testimony is to propose and explain the Company's SCRC adjustment for effect February 1, 2024. Our testimony provides an overview of the adjustments to the components of the SCRC rate, including the (i) Regional Greenhouse Gas Initiative ("RGGI") refund, (ii) Ch. 340 excess Burgess BioPower power purchase agreement[1] ("PPA") payments, (iii) Environmental Remediation costs, and (iv) Net Metering adders.

---

[1] PPA contract with Burgess BioPower, LLC approved in Docket No. DE 10-195, Order No. 25,213 (April 18, 2011) and Order No. 26,198 (December 5, 2018). The PPA terminates on November 30, 2033.

Q. Have the SCRC rates been calculated consistent with the Commission's Order No. 26,768 (January 30, 2023) in Docket No. DE 22-039?

A. Yes, the preliminary February 1, 2024 SCRC rates have been prepared consistent with the last Commission order approving SCRC rates for effect February 1, 2023.

II. OVERVIEW

Q. Please describe the components of the SCRC and their application to this rate request.

A. The SCRC recovers certain costs under the authorities contained in RSA Chapters 374-F and 369-B. The PSNH Restructuring Settlement, approved in Order No. 23,549, defined PSNH's stranded costs and categorized them into three different parts (i.e., Parts 1, 2, and 3). Part 1 costs are comprised of the Rate Reduction Bond ("RRB") Charge, which was calculated to recover the principal, net interest, and fees related to the RRBs. These original RRBs were fully recovered as of May 1, 2013. As part of Eversource's divestiture of its generating facilities under the settlement in Docket No. DE 14-238, new RRBs were issued in May 2018 and are included as Part 1 costs in the SCRC rate. Part 2 costs are "ongoing" stranded costs consisting primarily of the over-market value of energy purchased from independent power producers ("IPPs") and the amortization of payments previously made for IPP buy-downs and buy-outs as approved by the Commission. Also, as part of the divestiture of Eversource's generating facilities, Part 2 incorporates various new costs, including: the costs of retained power entitlements,[2] unsecuritized prudently incurred

[2] In addition to the contract with Burgess BioPower, LLC, the PPA with Lempster and N.H. Electric Cooperative (NHEC) – Lempster approved in Docket No. DE 08-077, Order No. 24,965 (May 1, 2009), terminated on November 30, 2023.

decommissioning costs (if any), environmental, or other residual costs or liabilities related to the generating facilities. Part 3 costs, which were primarily the amortization of non-securitized stranded costs, were fully recovered as of June 2006.

Additionally, as noted above, the SCRC rate proposed to be billed to customers beginning February 1, 2024 includes recovery/refund of the following adders: (i) the RGGI refund as required by RSA 125-O:23, II and Order No. 25,664, directing Eversource to refund RGGI auction proceeds it receives through the SCRC rate; (ii) Ch. 340 excess Burgess PPA payments per the Docket No. DE 19-142 Settlement Agreement and Order No. 26,331; (iii) amortization of Environmental Remediation costs per the Docket No. DE 19-057 Settlement Agreement Section 7.1 and Order No. 26,433; and (iv) Net Metering Costs per the Docket No. DE 20-136 Settlement Agreement and Order No. 26,450.

Q. Is Eversource currently proposing a single SCRC rate with separate adders?

A. No, it is not. Attachment YC/EAD-1 and Attachment YC/EAD-2 provide preliminary rate class specific rate calculations for the SCRC rates proposed for February 1, 2024. For this February 1, 2024 rate adjustment, the Company will file a final rate update in January 2024. The rate update filing is consistent with prior SCRC filings and is necessary to reflect (i) additional actual data that is currently unavailable (November 2023 data); and (ii) the annual RRB Routine True-Up letter that will be filed in early January 2024 in Docket No. DE 17-096 to update the RRB rates. The preliminary February 1, 2024 average SCRC rates (Part 1 and Part 2 only, excluding the RGGI Refund, Ch. 340, Environmental

Remediation and Net Metering adder amounts) provided in this filing are shown in the table below.

Rate Class	Current Rate (cents per kWh)	Preliminary Rate (cents per kWh)	Change (cents per kWh)
Rate R	0.718	0.376	(0.342)
Rate G	0.734	0.368	(0.366)
Rate GV	0.606	0.314	(0.292)
Rate LG	0.228	0.110	(0.118)
Rate OL/EOL	1.024	0.519	(0.505)

The SCRC rate adders for RGGI Refund, Ch. 340, Environmental Remediation and Net Metering are provided in Attachments YC/EAD-4, YC/EAD-5, and YC/EAD-6 (RGGI Refund); YC/EAD-7, YC/EAD-8, and YC/EAD-9 (Ch. 340); YC/EAD-10, YC/EAD-11, and YC/EAD-12 (Environmental Remediation); and YC/EAD-13, YC/EAD-14, and YC/EAD-15 (Net Metering). The preliminary February 1, 2024 SCRC rate adders provided in this filing are shown in the table below.

Rate Adder	Current Rate (cents per kWh)	Preliminary Rate (cents per kWh)	Change (cents per kWh)
RGGI Refund	(0.362)	(0.331)	0.031
Ch. 340	(0.129)	0.480	0.609
Environmental Remediation	0.046	0.065	0.019
Net Metering	0.414	0.701	0.287
Total Adders	(0.031)	0.915	0.946

The total February 1, 2024 SCRC rates (including adders) by rate class provided in this filing are included below.

Rate Class	Current Rate	Preliminary Rate (cents per kWh)	Change (cents per kWh)

	(cents per kWh)[3]		
Rate R	0.687	1.291	0.604
Rate G	0.703	1.283	0.580
Rate GV	0.575	1.229	0.654
Rate LG	0.197	1.025	0.828
Rate OL/EOL	0.993	1.434	0.441

Q. Historically, there was a single average SCRC rate that was applied to all customers. Why are there now class specific average SCRC rates?

A. As part of the Settlement Agreement approved in Docket No. DE 14-238 at line 252 of Section III.A, the SCRC revenue requirement is allocated to each rate class as follows:

Rate Class	Allocation Percentage
R	48.75
G	25.00
GV	20.00
LG	5.75
OL/EOL	0.50

Applying this differing allocation by rate class means that there can no longer be a single average SCRC rate for all customers. Page 1 of Attachment YC/EAD-1 provides the rate class specific average SCRC rates including and excluding the RGGI Refund, Ch. 340, Environmental Remediation, and Net Metering adders.

Q. What are the major reasons for the increase in the total SCRC rates (including adders) from the rates currently in effect?

A. The change in the preliminary SCRC rates for effect on February 1, 2024, as compared to the current rates, is due primarily to an increase in the Rate Adders based on the recent

[3] Rates approved in Docket No. DE 22-039, Order No. 26,768 (January 30, 2023).

impact of volatility in energy market prices versus what was originally forecast in the Ch. 340 and Net Metering adders, resulting in projected higher under-recovery balances as of the current rate year end on January 31, 2024. The increase in the Rate Adders is somewhat offset by the projected net decrease in Part 1 and Part costs as noted below: (i) a slight decrease in Part 1 costs of $(1.2) million; (ii) a decrease in Part 2 Above Market IPP and PPA costs of $(40.3) million; (iii) an increase in other Part 2 costs of $10.3 million, and (iv) an increase due to the change in prior period over-recovery, as compared to the current period over-recovery, which amounts to $7.4 million. The cumulative impact of these changes is an increase in the total SCRC rates. The table below provides additional detail identifying the variance from the underlying cost in the rates that were approved for February 1, 2023 and the preliminary February 1, 2024 rate filing.

	($000s)		
Description	**Proposed Docket No. DE 23-091 (Forecast Rate Year Feb 2024 to Jan 2025) filed December 15, 2023**	**Docket No. DE 22-039 (Forecast Rate Year Feb 2023 to Jan 2024) per Order No. 26,768, January 30, 2023**	**Inc/(Dec)**
Col. A	**Col. B**	**Col. C**	**Col. D**
			Col. B - Col. C
Part 1 Costs	**$ 56,062**	**$ 57,259**	**$ (1,197)**
<u>Part 2 Costs:</u>			
Above Market Non-Wood IPPs	$ (22)	$ (526)	$ 504
Above Market Cost of Burgess	(14,558)	26,194	(40,751)
Above Market Cost of Lempster	-	17	(17)
Above Market IPP & PPA Costs	$ (14,580)	$ 25,685	$ (40,265)
Energy Service REC Revenues Transfer	(13,203)	(15,455)	2,253
REC Sales Proceeds/RPS True-up	(359)	(2,088)	1,729
ISO-NE/Other O&M	52	42	10
Residual Generation O&M	(6,207)	(10,963)	4,756
NEIL Credit	(241)	(949)	707
EDIT	(2,584)	(3,293)	709
Generation Divestiture Costs not Securitized	-	-	-
Return	68	(115)	183
Total Part 2 SCRC Costs	**$ (37,054)**	**$ (7,136)**	**$ (29,919)**
SCRC Part 1 and 2 (Over)/Under Recovery (at January 31)	5,797	(1,563)	7,359
Total Part 1 and 2 Costs plus (Over)/Under Recovery	**$ 24,804**	**$ 48,560**	**$ (23,756)**
SCRC Part 1 and 2 Revenues	(24,799)	(48,599)	23,800
Total Increase in SCRC Part 1 and 2 Costs	**$ 6**	**$ (39)**	**$ 44**

Q. Please describe the detailed support for the calculation of the average SCRC rates provided in Attachments YC/EAD-1, YC/EAD-2, and YC/EAD-3.

A. Attachment YC/EAD-1, page 1, provides the calculation of the average SCRC rates for the five rate classes incorporating the cost allocation for each rate class defined in the settlement agreement approved in Docket No. DE 14-238 as shown above. Page 2 provides a summary of the monthly forecast cost information related to the Part 1 and Part 2 costs, as well as the total monthly forecasted SCRC revenues for the 12-month period from February 1, 2024 to January 31, 2025. Page 3 provides the estimated rate class specific RRB charges (SCRC Part 1) that were calculated using the current RRB rates established for the February 1, 2023 SCRC rate filing in Docket No. DE 22-039. The RRB charges on page 3 also reflect the most recent RRB rates established for the current period as filed in Docket No. 17-096 and provided in Attachment YC/EAD-20. Page 4 has been provided to reconcile the amount of funds that are collected through the RRB charge by its inclusion in the SCRC with the amount of funds that are in the Collection and Excess Funds trust accounts. It is important to note that customers are not directly paying the principal, interest, and fees associated with the RRBs in the SCRC rate calculation. Instead, customers are paying an RRB charge as part of the overall SCRC rate that results in remittances to the RRB trust that are used to satisfy the principal, interest, and fees due under the RRBs. The RRB charge is calculated to satisfy the principal, interest, and fees of the RRBs using forecasted sales. Page 5 provides detailed cost information by month related to the Part 2 ongoing costs, and summary information for the Burgess and Lempster PPAs, as well as cost and revenues associated with the purchase of Renewable Energy Certificates ("REC") from these contracts and the transfer of Class I REC revenues between the ES rate and the SCRC rate to account for the Class 1 RECs necessary to satisfy the Class 1 Renewable Portfolio Standard ("RPS") requirement for ES. Page 6 provides additional details related to the Burgess and Lempster PPAs, as well as the cost associated with the RECs purchased under these contracts and the transfer of the Class I REC RPS obligation amount between the SCRC and the ES rates. Page 7 provides the details regarding the calculation of the stipulated return. Attachments YC/EAD-2 and YC/EAD-3, pages 1 through 7, provide the actual and detailed forecasted cost, revenue, and carrying charge components relating to the SCRC reconciliation for the 12-month periods ending January 31, 2024 (Attachment YC/EAD-2) and January 31, 2023 (Attachment YC/EAD-3).

III. PART 1 COMPONENT

Q. How are the February 1, 2024 SCRC Part 1 Costs calculated?

A. The Part 1 SCRC actual and forecast costs for the 12-month periods ending January 31, 2024 and January 31, 2023 are shown in Attachments YC/EAD-2 and YC/EAD-3, Page 3, and forecasted costs for the 12-month period ending January 31, 2025 are shown in Attachment YC/EAD-1, Page 3. In the months that have been estimated for this filing, the forecasted Part 1 SCRC costs are calculated using the RRB rates established in the latest Routine True-up Letter dated January 11, 2023 in Docket No. DE 17-096 multiplied by the forecasted sales for each rate class. Since there is a one-month lag in the RRB remittance process, the forecasted sales are also reported on a one-month lag in Attachments YC/EAD-1 and YC/EAD-2, Page 3. These estimates represent a reasonable estimate of the expected RRB charge remittances.

Q. Will the RRB rates shown in Attachment YC/EAD-20 (January 11, 2023 RRB True-Up letter) be revised for the February 1, 2024 SCRC rate filing?

A. Yes. The Company will make an updated filing in early January 2024 after the Annual Routine True-up Letter is filed in Docket No. DE 17-096 to reset the RRB rates. The updated filing will reflect updated forecast Part 1 costs based on the new RRB rates. Therefore, the RRB rates set forth in Attachment YC/EAD-20 of the updated filing will be applied to the forecast kWh sales used throughout the SCRC rate by class to calculate the revenue required to apply to the Part 1 costs. Variances between estimated and actual revenue received from Part 1 costs will be reconciled in the February 1, 2025 SCRC filing.

IV. PART 2 COMPONENT

Q. Could you please provide additional details for the Part 2 ongoing costs included on page 5 of Attachments YC/EAD-1, YC/EAD-2, and YC/EAD-3?

A. Yes. The costs included in this SCRC filing on page 5 are:

1. (Lines 1 through 11): Non-Wood IPPs: All costs and market revenues associated with the existing IPPs. Prior to divestiture, any benefit of below market energy or capacity associated with the IPPs was included in the Energy Service rate, while the above market portion was included in the SCRC. Consistent with the settlement in Docket No. DE 14-238, all IPP costs and revenues, whether above or below market, now are included in the SCRC.
2. (Line 12) Burgess PPA: Effective April 1, 2018, the costs and market revenues associated with the Burgess PPA are included in the SCRC. Line 12 shows the net cost of the Burgess PPA. Additionally, provided in Attachments YC/EAD-1,

YC/EAD-2 and YC/EAD-3 (page 6) is support for the underlying actual and forecast assumptions related to the costs and revenues associated with the Burgess PPA by month.

3. (Line 13) Lempster PPA[4]: Effective April 1, 2018, the costs and market revenues associated with the Lempster PPA are included in the SCRC, and this line shows the net cost of the Lempster PPA. Additionally, provided in Attachments YC/EAD-2 and YC/EAD-3 (page 6) is support for the underlying actual and forecast assumptions related to the costs and revenues associated with the Lempster PPA by month.

4. (Line 14) Energy Service REC Revenues Transfer: This line has been included to capture the transfer of the RECs necessary to satisfy the Class I REC RPS obligation for ES customers. This is consistent with the treatment of Class I RECs described in Section II.H of the November 27, 2017 settlement in Docket No. DE 17-113, which states: "As to Eversource's RPS obligation relevant to Class I, the Settling Parties agree that it shall be managed in a manner consistent with that described on page 14 of the initial Testimony of Shuckerow, White & Goulding." That testimony provides, with reference to the Burgess and Lempster PPAs:

> The REC amounts purchased from these sources may more than meet energy service obligation quantities, eliminating the need for Class I purchases. Since the 2015 Agreement calls for the costs of those PPAs to be recovered via the SCRC, a transfer price for RECs obtained under those PPAs used to satisfy RPS needs for ES

[4] Lempster and NHEC – Lempster approved in Docket No. DE 08-077, Order No. 24,965 (May 1, 2009); contract terminated on November 30, 2023.

customers must be set. In order to properly account for these Class I REC purchases for both ES and SCRC purposes, Eversource proposes to establish a transfer price equal to the Class I REC prices established via the mechanism described previously.

5. (Line 15): REC Sales Proceeds/RPS True Up: As Class I RECs in excess of those necessary to satisfy the Energy Service Class I REC requirement are sold, the proceeds associated with the sales will be included in actual data, in addition to the annual RPS compliance filings in the month of June and any related RPS true-up related to the Class I REC transfer to ES.
6. (Line 16) ISO-NE/Other Costs: The costs included in this line are miscellaneous ISO-NE resettlement and administrative costs and other costs, along with credits that were historically included in the ES rate.
7. (Line 17) Residual Generation O&M: The ongoing costs and liabilities associated with the divested Generation assets. These include property tax refunds, pension credits, commitments associated with the hydro plants, and legal fees associated with lawsuits related to the Generation assets when they were owned by Eversource.
8. (Line 18) Nuclear Electric Insurance Limited ("NEIL") Credits: Charges and credits related to Seabrook Power Contracts between Eversource and North Atlantic Energy Company ("NAEC").
9. (Line 19) Excess Deferred Income Taxes ("EDIT"): At the beginning of 2018, the Federal and State tax rates changed, which resulted in EDIT. That excess is being refunded to customers.

10. (Line 20) Generation Divestiture Costs not Securitized: Divestiture costs not securitized that were subject to audit and settlement in Docket No. DE 20-005. Per the settlement agreement, a one-time amount of $12 million was recovered over a 12-month period ending January 2022.

Q. Is Eversource proposing any changes to recovery of Part 2 costs as part of this filing?

A. Yes. Due to recent legislative activity (i.e., the Governor's veto of House Bill 142 that was later upheld by the House of Representatives) and in compliance with the terms of the Commission- approved PPA with Berlin Station, LLC (i.e., Burgess), beginning December 1, 2023, Eversource is beginning to return the excess cumulative reduction amount over $100 million to customers.

Currently, the excess cumulative reduction amount over $100 million as of November 30, 2023 is approximately $710 million.[5] Per the terms of the PPA, the excess cumulative reduction amount will be divided by 12 months (approximately $5.9 million per month) and applied against the monthly energy payments being made in accordance with the PPA for monthly energy output purchased, until the excess cumulative reduction amount total is recovered. The energy portion due Burgess monthly for Dec 2023 through Nov 2024 will be offset against the $5.9 million (or as much as is available for offset) and

[5] 19-142_2023-07-14_EVERSOURCE_CURRENT-ECR-AMOUNT-REPORT.PDF (nh.gov)

returned back to customers (please see Attachments YC/EAD-1 and YC/EAD-2, Page 6, line 20).

Per the terms of the PPA, the procurement of Capacity and REC products will continue and payments will be made to Burgess, as the excess cumulative reduction amount calculation pertains only to the PPA's energy purchases. In addition, with the forecast of ongoing plant operations, the Ch. 340 Adder monthly excess cumulative reduction amount and reconciliation continues as shown in Attachments YC/EAD-7 and YC/EAD-8, Page 2, line 3.

V. RGGI REFUND COMPONENT

Q. Please describe the detailed support for the calculation of the RGGI Refund rate provided in Attachments YC/EAD-4, YC/EAD-5, and YC/EAD-6.

A. In Order No. 25,664 in Docket No. DE 14-048, and pursuant to RSA 125-O:23, II, the Commission ordered that certain proceeds from the quarterly RGGI auctions be rebated to Eversource's customers through the SCRC. Attachments YC/EAD-4, YC/EAD-5, and YC/EAD-6, page 1 provide a summary of forecasted 2024 and actual/forecasted 2023 and 2022 information related to RGGI auctions and the amounts allocated to Eversource for refund.

Q. Is Eversource proposing a specific RGGI Refund rate adder at this time?

A. Yes, it is. Attachment YC/EAD-4, page 1 provides a proposed rate calculation. The proposed February 1, 2024 RGGI Refund rate provided in this filing is (0.331) cents/kWh and is 0.031 cents/kWh lower of a benefit to customers than the current February 1, 2023 RGGI Refund rate of (0.362) cents/kWh.

VI. CH. 340 ADDER COMPONENT

Q. Please provide additional details for the Ch. 340 Adder costs included in Attachments YC/EAD-7, YC/EAD-8, and YC/EAD-9?

A. As described earlier, in Docket No. DE 19-142, a Joint Motion was filed related to the rate recovery of costs associated with the Cumulative Reduction Factor ("CRF") under the PPA with Burgess. Broadly speaking, under the terms of the PPA, any amounts in the CRF above $100 million were to be deducted from the amounts paid to Burgess for purchases under the PPA. At the end of operating year 6, the CRF amount was $106,976,603 or $6,976,603 above the limit set by the PPA. That amount was further reduced by the excess MWh adjustment called for in the PPA of $1,709,925, which was deducted from the amounts paid to Burgess during the first three months of operating year 7 (December 2019 through February 2020) and has been fully incorporated and recovered in previous SCRC rates.

It was also agreed in Docket No. DE 19-142 that the forecasted over cap costs for Burgess should be recovered in current rates rather than waiting until the end of the operating year and recovering in the following year. The calculation of Burgess over market costs per the PPA is shown in Attachments YC/EAD-1, YC/EAD-2, and YC/EAD-3, Page 6, lines 1 to 8. The Burgess over market energy costs are shown in Attachments YC/EAD-1, YC/EAD-2, and YC/EAD-3, Page 6, lines 16 to 21, and recovered in the Ch. 340 Adder rate as shown in Attachments YC/EAD-7, YC/EAD-8, and YC/EAD-9. Since these are actual and forecasted costs and revenues and rely on assumptions of Burgess energy output and market prices as well as forecasted retail MWh sales, the Ch. 340 adder costs are reconciled in this and future SCRC rate filings.

Under the terms of the settlement agreement in Docket No. DE 19-142, rather than being deducted from the amounts paid to Burgess, the excess is recovered from customers through the SCRC on an equal cents per kWh basis rather than the specified class percentages. This is shown in the Ch. 340 Adder calculations in Attachment YC/EAD-7. The updated and proposed Ch. 340 Adder rate effective February 1, 2024 is 0.480 cents/kWh as compared to the current Ch. 340 Adder rate of (0.129) cents/kWh. Attachment YC/EAD-7, page 1, provides a summary of the rate calculation and Attachments YC/EAD-7, YC/EAD-8, and YC/EAD-9, page 2, provide the monthly detail for the Ch. 340 costs and revenues. As noted above, the increase in the Ch. 340 Adder rate is due primarily to the recent volatility in energy market prices versus what was forecast at the time of the SCRC filing in Docket No. DE 22-039 (January 11, 2023). The concurrent recovery of the over market Burgess energy costs is removed from Part 2 SCRC cost and transferred for recovery through the Ch. 340 Adder. The over market energy costs are calculated based on the contract market rates. There is a slight difference between the over market energy costs per the PPA and ISO-NE revenues. The difference remains in the Part 2 SCRC costs. This is shown in Attachments YC/EAD-1, YC/EAD-2, and YC/EAD-3, Page 6.

VII. ENVIRONMENTAL REMEDIATION ADDER COMPONENT

Q. Please describe the detailed support for the calculation of the Environmental Remediation Cost Adder rate provided in Attachments YC/EAD-10, YC/EAD-11, and YC/EAD-12.

A. Per the Commission's Order No. 26,433 (December 15, 2020) approving the Settlement Agreement in Docket No. DE 19-057, the Company, in compliance with Section 7.1 of the Settlement Agreement, has prepared Attachment YC/EAD-10 to recover the Environmental Remediation Costs through the SCRC. Section 7.1 of the Settlement Agreement states the following:

> Since the time of restructuring, PSNH has been permitted to defer estimated environmental remediation/manufactured gas plant ("MGP") costs primarily relating to former generation sites. The Company shall be allowed to recover the environmental reserve/MGP liability in the Stranded Cost Recovery Charge ("SCRC") rate at equal cents per kWh across customer classes rather than in distribution rates. To address the shift to the SCRC, the Company has removed an annual amortization of $2.3 million over four years as of December 31, 2018 from its proposed revenue requirement in this case and shall include it in the SCRC filing following approval of this Settlement Agreement. The amounts to be recovered in the SCRC shall be updated to reflect the actual deferred balance as of the time of the SCRC filing and be amortized over a four-year period. Future environmental costs shall be recovered on a current basis through the SCRC.

As noted above, the Company removed from the base distribution revenue requirement an annual amortization amount of approximately $2.3 million based on the Docket No. DE 19-057 test year-end Regulatory Asset balance. Consistent with the Commission's approval of the Settlement Agreement in Order No, 26,433, Attachment YC/EAD-10, page 2, footnote (A), reflects the Environmental Remediation Regulatory Asset balance as of

January 31, 2021 of approximately $12.2 million to be recovered over four years, or an annual amortization amount of approximately $3.0 million. The amount will be fully amortized as of January 31, 2025. Attachment YC/EAD-10, page 1, reflects the proposed average Environmental Remediation Cost Adder rate of 0.065 cents/kWh effective February 1, 2024, as compared to the current Environmental Remediation Adder rate of 0.046 cents/kWh.

VIII. NET METERING ADDER COMPONENT

Q. Please describe the detailed support for the calculation of the Net Metering Adder rate provided in Attachments YC/EAD-13, YC/EAD-14, and YC/EAD-15.

A. Docket No. DE 20-136 reviewed and determined through a Settlement Agreement that the SCRC is the appropriate recovery mechanism for recovery and rate treatment of net metering and group host costs as shown in Attachments YC/EAD-13, YC/EAD-14, and YC/EAD-15. Recovery through the SCRC was approved by the Commission in Order No. 26,450. As noted above, the increase in the Net Metering Adder rate is due primarily to the recent volatility in energy market prices versus what was forecast at the time of the SCRC filing in Docket No. DE 22-039 (January 11, 2023). Attachment YC/EAD-13 reflects the proposed average Net Metering Adder rate of 0.701 cents/kWh effective February 1, 2024, as compared to the current Net Metering Adder rate of 0.414 cents/kWh. Note that the net metering expense total shown in the attachments includes a payment in the amount of $104,073.44 made by the Company to a customer for excess energy generated by the customer and exported to the distribution system. That customer was automatically enrolled with a community power aggregation for a number of months and, as a result, inadvertently lost, through no fault of the customer's, credits for the net exports to the grid for that period of time, which is not what the customer desired and would not have elected if the customer had known that would be the result of enrollment with the community power aggregation. The Company provided compensation in the amount the customer would have received if not automatically enrolled with the aggregation for actual electric exports to the grid from the customer's eligible facility during that period of time.

IX. BILL IMPACTS AND TARIFF PAGES

Q. Mr. Davis, has the Company included rate exhibits and calculations of the customer bill impacts for the proposed February 1, 2024 SCRC rate change?

A. Yes, this detail is provided in Attachment YC/EAD-18. Individual rate class SCRC rate calculations flow from Page 3 to Page 2 and are summarized on Page 1.

- Page 1 compares the current SCRC rates (as of November 1, 2023) to the updated SCRC rates proposed for effect February 1, 2024 by rate class calculated on Page 2.
- Page 2 applies the rate adjustment factors calculated on Page 3 to the current SCRC rates (excluding the current RGGI adder) by rate class and then adds the proposed RGGI adder to obtain total SCRC rates.
- Page 3 provides the calculation of the SCRC rate adjustment factors by rate class for the updated proposed average SCRC rates and RGGI adders.

- Page 4 provides a comparison of residential rates proposed for effect February 1, 2024 to current rates (as of October 1, 2023) for a 550 kWh monthly bill, a 600 kWh monthly bill, and a 650 kWh monthly bill.
- Page 5 provides a comparison of residential rates proposed for effect February 1, 2024 to rates effective February 1, 2023 for a 550 kWh monthly bill, a 600 kWh monthly bill, and a 650 kWh monthly bill.
- Page 6 provides the average impact of each change on bills for all rate classes by rate component on a total bill basis, excluding Energy Service.
- Page 7 provides the average impact of each change on bills for all rate classes by rate component on a total bill basis, including Energy Service.

Q. Has the Company provided updated Tariff pages as part of this filing?

A. Yes. Updated tariff pages are provided as shown in Attachment YC/EAD-19.

X. ORDER NO. 26,658 COMPLIANCE[6]

Q. Has Eversource provided a reconciliation of Part 2 SCRC costs with actual costs?

A. Yes, please see Attachments YC/EAD-16 (February 2023 to January 2024) and YC/EAD-17 (February 2022 to January 2023) for a reconciliation of Part 2 SCRC costs.

Q. The Commission's Order No. 26,768 approved the SCRC to be filed on an annual basis prospectively.[7] Has the Company complied with this directive?

---

[6] Order No. 26,658 (July 28, 2022), at 6.
[7] Order No. 26,768 (January 30, 2023), at 6-7, subject to the proviso that Part 1 RRB Charges may be subject to periodic adjustments, as appropriate, through petitions to the Commission.

A. Yes, the Company has implemented the change to an annual filing as compared to prior SCRC filings, as shown in Attachment YC/EAD-1, page 1, lines 6 to 8, whereby it breaks-out the SCRC rate between Part 1 and Part 2 costs. Going forward for any interim RRB rate change, the rate year forecast for the following February to January period, as filed in December (Preliminary)/January (Update with new RRB rates) of each year, would be adjusted to reflect any necessary change in Part 1 costs on line 1, and the impacts of that change to lines 4, 6, 8, 10, 12, 14, and 16. The forecast costs and rates for all other SCRC components would be unchanged from the December/January filings.

XI. CONCLUSION

Q. Does Eversource require Commission approval of the SCRC rate billed to customers by a specific date?

A. Yes, Eversource requires final approval of the SCRC, RGGI Refund, Ch. 340, Environmental Remediation, and Net Metering Adder rates by January 25, 2024, to implement the new rates for service rendered on and after February 1, 2024.

Q. Does this conclude your testimony?

A. Yes, it does.

EXHIBIT B

STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

January 11, 2024 - 1:01 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.
(Status conference)

PRESENT: Chairman Daniel C. Goldner, *Presiding*
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.
Yi-An Chen
Bryant Robinson

Reptg. Residential Ratepayers:
Michael Crouse, Esq.
Office of Consumer Advocate

Reptg. New Hampshire Dept. of Energy:
Matthew C. Young, Esq.
Marie-Helene Bailinson-Georges, Esq.
Stephen Eckberg, Electric Group
(Regulatory Support Division)

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

I N D E X

P R O C E E D I N G

CHAIRMAN GOLDNER: Okay. Good afternoon. I'm Chairman Goldner. I'm here today with Commissioner Simpson.

This status conference regarding Burgess issues is being held pursuant to the Commencement of Adjudicative Proceeding Order issued by the Commission on December 22nd, 2023, which also scheduled a July **[**January**?]** 19th hearing regarding the Stranded Cost Recovery Charge, or SCRC, to be charged Eversource ratepayers as of February 1st.

The Commission is especially interested in whether the Burgess-related arrangements will produce just and reasonable rates for Eversource customers, and whether they are in conformity with relevant law.

For today's status conference, after appearances by the parties, we'll have some Commissioner questions regarding the elements of the Company's testimony regarding Burgess, the DOE Technical Statement of Mr. Stephen Eckberg, the Company data responses provided to the Commission from Ms. Chen and Mr. Davis of

Eversource. And we will invite the parties to make brief opening statements after appearances are taken.

So, we'll now take appearances, starting with the Company.

MR. WIESNER: Good afternoon, Mr. Chairman, Commissioner Simpson. I'm David Wiesner, representing Public Service Company of New Hampshire, doing business as Eversource Energy. With me today is our chief witness on these issues, Yi-An Chen, as well as Bryant Robinson, both who work for the Company on revenue requirements.

CHAIRMAN GOLDNER: Thank you. We'll move to the Office of the Consumer Advocate.

MR. CROUSE: Good afternoon, Commissioners. My name is Michael Crouse, Staff Attorney for the Office of the Consumer Advocate, representing residential ratepayers in this matter.

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

MR. YOUNG: Good morning *[sic]*, Commissioners. Matthew Young, on behalf of the

Department of Energy. And with me today is Co-Counsel Marie-Helene Bailinson, as well as Stephen Eckberg, who is a Utility Analyst in the Electric Division.

CHAIRMAN GOLDNER: Thank you. Are there any other preliminary matters for the status conference, outside of Burgess?

[No indication given.]

CHAIRMAN GOLDNER: Okay. So, seeing none, we'll invite the parties to make brief opening statements regarding the Burgess matters, beginning with Eversource.

MR. WIESNER: Thank you, Mr. Chairman.

We really hadn't prepared an opening statement. I think that the data request responses that we provided hopefully provided some greater clarity about the Berlin -- the Burgess PPA provisions, relevant to the Excess Cumulative Reduction Recoupment mechanism, and how it is expected to operate, and how we have estimated it will operate for the SCRC rate period that begins February 1st.

CHAIRMAN GOLDNER: Okay. Thank you.

And, before we move to the OCA, I'll

just say that the Commission has spent considerable time in the filing, and we are having trouble tracking the transactions, so -- including the filing -- the recent filing from the Company. So, we'll have some questions today, and it's in the spirit of preparing for the Friday hearing, and helping everyone understand at least where we're struggling.

So, thank you, Attorney Wiesner. Let's move to the Office of the Consumer Advocate, and Attorney Crouse.

MR. CROUSE: Thank you, Commissioners.

The OCA is reserving its right to present its final position until the hearing next week, but has found the record requests and the responses by the Company rather helpful.

As you may already be aware, we've already met once in a technical session with both the Department and Eversource, and are going to meet again mid-week next week. And we have just felt that the process has been helpful, as the OCA does agree with the Department's technical statement, with respect to this is the first time that we've seen in a return excess of those

Cumulative Reduction funds taking place. So, we just want to make sure it goes by correctly.

Thank you.

CHAIRMAN GOLDNER: Does the Consumer Advocate have any thoughts -- one of the things the Commission is struggling with is that the SCRC actually increases, the rate increases, relative to last year, it doubles almost, and that's sort of contrary to the expectation that maybe the Legislature, the Governor, and ratepayers have of a $70 million reduction.

So, does the Consumer Advocate have any sort of initial thoughts on that "big picture" view?

MR. CROUSE: It's certainly an interesting development. We haven't fully formed our position on that, which is why we have a great interest in hearing the Commissioners' concerns, as well as anything that the Department or Eversource has to share at this status conference this week. But we are certainly looking into this, to make sure everything is developing as just and reasonable.

CHAIRMAN GOLDNER: Okay. Thank you,

Attorney Crouse.

And we'll turn now to the New Hampshire Department of Energy, and Attorney Young.

MR. YOUNG: Thank you, Commissioners.

Similarly, the Department doesn't have a prepared opening today. But we have filed a Technical Statement of Stephen Eckberg on January 5th.

After reviewing the various filings and power purchase agreements, we do believe that the Burgess costs and reconciliation in the filing are appropriate. But we do continue to review the filing, and are interested in the technical session scheduled next week with the Company.

CHAIRMAN GOLDNER: Okay. Okay, thank you.

So, now, we'll move to Commissioner questions, beginning with Commissioner Simpson.

CMSR. SIMPSON: Thank you, Mr. Chairman.

I think, similar to the Chairman's comments, we're just struggling to go through the schedules, and understand the flow between the PPA, the refund, and then prior term SCRC costs.

It looks like there's a significant carryforward from the prior term. But, you know, more insight into that. How that estimate was developed last term? What led to that carryforward here? The difference, functionally, between the 340 Adder, Part 2 costs, how do those play into the world for deriving the final SCRC rate charges?

You know, I don't know if we're expecting your witnesses to testify today. I don't think we are. I don't know if -- what's your expectation, Mr. Chairman?

CHAIRMAN GOLDNER: My thoughts were that we could ask questions of the attorneys, and to sort of frame the concerns that we have. And, if the attorneys felt that it would be helpful to engage the analysts, then we would certainly appreciate that. Or we could, you know, so, we would appreciate any sort of insight that we can get from the Company or the parties today, but not --

CMSR. SIMPSON: Uh-huh.

CHAIRMAN GOLDNER: -- not put a witness on the stand.

CMSR. SIMPSON: Okay. That's helpful.

Understanding that the PPA has taken root over a decade ago, and there's been various changes through acts of the Legislature, the terms of the original PPA, how the figures for REC capacity payments, energy payments were derived, and then subsequently calculated and reflected in the schedules, I'm struggling to follow that. How the Part 2 costs ultimately get collected via the final SCRC rate, understanding that.

The process and methodology employed to develop the contract prices that I mentioned, the market price for energy, the REC payment, the capacity payments. In the PPA, there are what appear to be step-downs of 75 percent of the Class I REC price, to 70 percent, and subsequently following that, based on the roughly $61 per Class I REC that's identified by the DOE.

Understanding the market volatility, and the interplay with that over the last year with the carryforward.

A breakdown of the overall increase in the SCRC. I think I understand that, but I really would appreciate a walk-through.

Whether there are interest or fees on the rate reduction bond charges? I think that's probably outside the scope of this. So, I'll remove that question from the record, given that this is just for Burgess.

So, those are really where I'm struggling. And I hope that, at hearing, the Company can walk us through the SCRC filing Attachment YC/EAD-1 through 18, and show us how the terms of the PPA are reflected in this presentation, and how the prior carryforward is reflected as well.

I think, at this point, that's all I would have. I just need some additional clarity from the parties, because my naivety is an obstacle at this point. So, looking forward to hearing from the witnesses.

Thanks.

MR. WIESNER: So, I guess I'm wondering, you know, what we're going to do today? Because, if we're going to get to that level of walking through the schedules and the specific numbers, and how they were, you know, estimated, how they were reconciled against actuals from prior years, I think that is something where the analysts are going to be front and center in helping you understand that.

I think, you know, I'm not -- the status conference is kind of a strange procedural event. It kind of seems like more of a "discovery" undertaking. We have the witnesses here, we have analysts who can speak to those issues, but it's not on the record --

CMSR. SIMPSON: Right.

MR. WIESNER: -- for a decision. But it might be helpful in the Commission's understanding, and it might help us have a more efficient hearing next week.

CMSR. SIMPSON: That's what we're aiming to.

MR. WIESNER: Okay.

CMSR. SIMPSON: And, given your background, formerly with the Commission, the Department, now with the Company, you know, we look to your expertise, I would say, Attorney Wiesner.

If there are elements to the PPA transaction and the Company's engagement with

Burgess, from a legal standpoint, that might be helpful to us, to lay a foundation for our understanding, that would be helpful.

Because, ultimately, our number one objective, with respect to Burgess, is to ensure that the terms of the PPA, that were blessed by this Commission in 2010-2011 timeframe, are being met, and that ratepayers are accurately receiving the refund.

MR. WIESNER: Okay. And I'll just take this opportunity to say that the use of the word "refund" is, you know, perhaps not entirely accurate, and we tried to clarify that --

CMSR. SIMPSON: Uh-huh.

MR. WIESNER: -- in the data request responses that we provided. It really is not a refund of a pot of money. And I think the DOE's technical statement also drew a distinction between the RGGI refund, where there are funds to be returned to customers, --

CMSR. SIMPSON: Uh-huh.

MR. WIESNER: -- and the way this mechanism works, which is a setoff against future energy payments that would be made to the plant, so long as it continues to operate. That's what the PPA calls for. And I think we are confident that what we proposed, you know, putting aside the specific numbers and how they all flow, but that what we proposed is fully consistent with the PPA terms.

I'll say as well, that the only thing that's really new this year is that the prior -- we had four years of suspension of recoupment of the Excess Cumulative Reduction, because the Legislature said that's what needed to happen. As of December 1st, that suspension is done. And there's a lag time, because the bill for payments to the plant operator for December production won't be prepared, in my understanding, until later this month. So, you know, you got a full month of December production, and then you have a bill that's payable that will be prepared, I believe, sometime in the latter part of January.

So, that has not occurred yet. But what we have in the filing that's before you in the SCRC docket are the schedules that contain the Company's estimates, based on historical experience and market projections of how that will work going forward.

And that's about the full extent of my understanding. And, if we want to go line-by-line, it's going to be much more --

CMSR. SIMPSON: Uh-huh.

MR. WIESNER: -- productive to do that with Ms. Chen or Mr. Robinson.

CMSR. SIMPSON: Okay. And that's fair. We expected that today would be somewhat stage-setting for the hearing coming up next week.

We, I think as you indicated, our hope was to facilitate an efficient process next week with this status conference.

MR. WIESNER: And I guess I'll just also take the opportunity to state the obvious, which is the SCRC covers a lot different components.

CMSR. SIMPSON: Uh-huh.

MR. WIESNER: And it's entirely possible that, you know, even if the total net impact of the Burgess PPA were less than it would have been otherwise, that other rate components are higher, in that the -- so that the total all-in rate, you know, may be higher as a result of changes affecting those other rate components.

And, as the testimony refers to, some of the, you know, more dramatic changes that may jump off the page are, you know, driven largely by the volatility in market prices over the past year, which, of course, is well known.

CMSR. SIMPSON: Uh-huh. Okay. I'll stop there for now. And I may have other questions, after hearing from you, Mr. Chairman. But that's all I have.

Oh.

MR. YOUNG: Commissioner, I think Mr. Eckberg wanted to just chime in.

CMSR. SIMPSON: Please. Thank you.

MR. ECKBERG: Thank you for the opportunity to contribute. Just as a little bit of supplemental information, Chairman Goldner a few months ago mentioned something about the fact that the SCRC rate overall is increasing a bit, even though there is a -- I believe you referred to a $70 million refund or rebate-type situation.

And, in fact, while that is that approximate amount, the 70 or $71 million, is, as explained in the Company's testimony, that amount is what we refer to as the "Excess Cumulative Reduction Fund". And that is the amount that is, as Attorney Wiesner explained, currently beginning to be flowed back to customers.

I think the Company's testimony and schedules also demonstrate that that amount will not be completely returned to customers in a 12-month period. And, hopefully, that aspect of the return is clear. Also, I think the -- there's a schedule attached to the Company's response to Question 3, which shows that, actually, I believe a little bit less than half of it only will be returned, just because of the way the return works over time.

So, it isn't the full 70 million that will be returned in the next year. That will take several years to take place.

And that's what I wanted to offer at this point.

CHAIRMAN GOLDNER: Thank you. And that's actually at the very center of the Commission's questions.

CMSR. SIMPSON: Uh-huh.

CHAIRMAN GOLDNER: Because, when we read the PPA, and we look at the calculations for the return, and we try to pull all that together, we're having -- we're struggling to reach an understanding of the numbers as filed by the Company.

So, we'll continue to ask some questions today to kind of show where we're confused, and then any enlightenment that you could provide would be very helpful.

So, I'll just kind of proceed with a few questions, and then maybe it will become clear where we're -- where we're struggling.

So, let me start with kind of the "big picture". So, Attorney Wiesner, when the technical team is here next week, I'll kind of lead with the question of, you know, what's the total SCRC cost, from a ratepayer perspective, for the upcoming twelve months from the prior twelve months? I get -- I get about 95 million for the upcoming twelve months in the SCRC, and I get about a 53 million last year. So, that's -- the SCRC, in total, is going up 40 million. And, yet, ratepayers, the Legislature, Governor's

Office, is thinking 70 million.

Now, to Mr. Eckberg's point, totally understand that that's probably not the reality of how the PPA works. But, in the minds of the public, that's what we're -- that's what we're -- I think we're going to face, in terms of the public scrutiny of what we're talking about here today.

So, we have an SCRC that's going way up, we have sort of an expectation that it goes way down, and that's something we'll want to fully explore next week.

And, so -- and one question I would like to have answered today, Attorney Wiesner, if possible, from the Company is, I'm trying to follow the money. So, I know that Eversource, per the PPA, is writing checks to Burgess for capacity payments, for RECs, and for the cost of energy. And let me -- just bear with me a second here, let me click over to another spreadsheet.

And what's referred to in the Company's filing as the "contract prices".

So, when I add all that up, it looks to me like Eversource cut a check to the company last year for about $72 million. Is that something the Company could help me with today? Is that what's happening? The Company is writing checks for 72 million, to Eversource, at least for last year, and then we'll talk about -- I'm sorry, to Burgess, for last year? And, then, we'll talk about this year in a moment.

And I'm looking, for reference, for the analysts, it's YC/EAD-1, Page 6. And I'm adding up just all the contract prices. So, 43 million, 4 million, and 24 million, in those three lines, respectively, Lines 2, 9, and 14.

I'm just trying to understand the money that's flowing to Burgess as part of what's going on here.

MR. WIESNER: So, YC/EAD-1 is the projection for the coming year?

CHAIRMAN GOLDNER: Correct.

MR. WIESNER: Okay.

CHAIRMAN GOLDNER: Correct. And you filed the history as well. So, on EAD-2, it's got the prior year, and EAD-3 has got the year before that. So, I'm just trying to reference the material I'm looking at.

Is that right, 72 million? Yes.

MS. CHEN: So, if I can start with --

CHAIRMAN GOLDNER: Probably EAD-2 is more appropriate, right?

MS. CHEN: Yes. Because that's the actual through November 2023.

So, if I can direct the Commission to Line 9, that's the -- and that's the twelve-month total, 3.9 million, that's the capacity.

CHAIRMAN GOLDNER: Yes.

MS. CHEN: And, then, on Line 14, --

CHAIRMAN GOLDNER: Is the RECs.

MS. CHEN: The RECs, yes.

CHAIRMAN GOLDNER: Yes. And, then, Line 2 would be the energy, the energy at the contract price, right, Line 2?

MS. CHEN: Yes.

[Court reporter interruption.]

MS. CHEN: Oh, sorry. Yes. So, Line 2, 43.7 million would be the energy piece.

CHAIRMAN GOLDNER: So, am I doing the math right, to say that 43 million in Line 2, the 4 million on Line 9, and the 24 million on Line 14, composes the entirety of the checks that go from Eversource to Burgess, is that right?

MS. CHEN: Correct.

CHAIRMAN GOLDNER: Thank you. Okay, that's very helpful. We were trying to figure that out. It took us a while.

Okay. So, now, if we move to the same schedule for the upcoming year, the year beginning February 1st, we have almost the same numbers, it's 43 million on Line 2, 4 million on Line 9, and 25 million on Line 14, so very similar.

Now, is Eversource cutting that same check to Burgess, or are you removing Line 2?

MS. CHEN: So, we will be removing Line 2, given that this is a forecasted amount. And it's only if Burgess continues to generate energy. And, then, we will withhold the payment of whatever they generate for the energy piece. And, then, for the RECs and the capacity, they will continue.

CHAIRMAN GOLDNER: Even if -- only if they're an ongoing concern, right? Only if they're still producing energy? You don't pay them for RECs if they're not producing, correct?

MS. CHEN: You are correct.

CHAIRMAN GOLDNER: Okay.

MS. CHEN: That's what I meant.

CHAIRMAN GOLDNER: So, thank you for that.

So, let's just take, just to make sure I'm clear, February of '24, so, next month, you will -- Eversource will write a check on the REC line for one-third of -- is that right? Am I reading that right? November 1st delivered is $60. I'm not sure why it's so small. Let's take a different month. Let's take July of '24. July '24, so, the RECs, for the RECs, the Company will send a check to Burgess for $8,046,000, divided by 3, correct? So, one-third of the number in that column? Or will you cut the check for the entire amount of the RECs in that column?

CMSR. SIMPSON: Yes. Is it for the whole quarter that you pay them?

CHAIRMAN GOLDNER: Right. Is this for the quarter or for the month?

MS. CHEN: Yes. It's for the quarter.

MR. ROBINSON: For the quarter.

CHAIRMAN GOLDNER: So, it's the quarter

ended. So, once the quarter, --

[Court reporter interruption - multiple parties speaking at the same time.]

CHAIRMAN GOLDNER: So, I'll repeat for the court reporter.

So, for the RECs, I believe the Company is saying that, once the quarter is complete, then the Company writes the check for the amount on Line 14?

MR. ROBINSON: Correct. There's a lag. And you were asking about why the number was so low in the April '24, that will be Q4 of 2023 that we're paying for those RECs. And the way the Burgess contract works, we're capped at 400,000 RECs. So, the buildup is used in Q1 through Q3 of a calendar year, Q4 is sort of the true-up that you adjust to get to that 400,000 cap.

CHAIRMAN GOLDNER: Very good. Thank you. That is extremely helpful. We couldn't figure that out.

CMSR. SIMPSON: And that must be why Line 13 has a different REC price associated with it, because it's for the prior --

MR. ROBINSON: Correct.

CMSR. SIMPSON: -- compliance year.

MR. ROBINSON: Because of the lag.

CMSR. SIMPSON: Okay.

MR. ROBINSON: Because there's a one-quarter lag in the payment of the RECs. You're 100 percent correct. The RECs are paid the quarterly total. It's not one-third of each month, it's they bill us for the quarter, that's what we pay. So, that $8 million projected for July '24, Commissioner, that's the amount for the July bill that we would pay.

CHAIRMAN GOLDNER: I see. Thank you very much. Okay. That's very helpful.

In that same month, July of '24, it looks like the check that would go to the company would be $337,000, is that right? I'm reading Line 9.

MS. CHEN: Capacity.

CHAIRMAN GOLDNER: Capacity, right.

MS. CHEN: Yes. The forecasted, yes.

CHAIRMAN GOLDNER: Okay. Very good. And would that be all that Burgess would receive? They would get the check for the $8 million that we just talked about, because that's -- that's queued up over time, then they would get a check for 337,000. Is that it? Or, would Eversource write additional checks to the company for anything?

MS. CHEN: For the month of July, that would be the only thing, if they continued to operate.

CHAIRMAN GOLDNER: Perfect. Thank you. Excellent. This is very helpful. Okay.

CMSR. SIMPSON: And, then, if I may?

CHAIRMAN GOLDNER: Please.

CMSR. SIMPSON: So, then, Line 7, you refer to as the "Chapter 340 Reduction", that is the return to customers from a prior period? What period are we looking at there?

MS. CHEN: So, that would be the -- so, this actually ties to the response to the data request, PUC 1-003. So, this is, because of the middle of the -- of this Excess Cumulative Reduction, that's -- now we have to start, like, returning through the SCRC mechanism to the customers. So, we reflect -- reflect it in the schedule starting December 2023. So, if we go to

YC/EAD-2, Page 6, so, on Line 30 -- I'm sorry, Line 20. So, you will see, starting December 2023, there will be this Excess Cumulative Reduction forecast reflected in the schedule, which ties to what we responded in that attachment, PUC 1-003.

CMSR. SIMPSON: So, does that figure reflect a reduction in the payment that you make to Burgess? You reduce the check that you are cutting them that month?

MS. CHEN: So, if I can refer you to that attachment, 1-003, --

CMSR. SIMPSON: Yes.

MS. CHEN: -- to the data request.

CMSR. SIMPSON: I have that in front of me.

MS. CHEN: Okay. So, it's actually -- so that you can see the excess amount, total of 70.595 million, in Column C. And, then, for Column C and D, that's comparing which is the lesser of the number.

CMSR. SIMPSON: I'm sorry, which tab are you looking at, when you refer to the columns?

MS. CHEN: Oh. It's the Attachment PUC 1-003, Page 1.

CMSR. SIMPSON: So, it's just prose, it's not --

CHAIRMAN GOLDNER: Yes. Yes. There you go.

CMSR. SIMPSON: Thank you. Okay, please continue.

MS. CHEN: Oh, sure. So, Column B, you can see, in December 2023, that's the Excess Cumulative amount, the "70.595 million".

CMSR. SIMPSON: Yes.

MS. CHEN: So, we amortize that by twelve months. So, that's where you can see Column C had the 5.9 millionish per month, as the estimates. And, then, Column D is the estimated energy payment that we would -- we would "cut a check", so to speak, if we are not in the situation today.

CMSR. SIMPSON: Normal buying --

[Court reporter interruption - multiple parties speaking simultaneously.]

CMSR. SIMPSON: If you had normally -- if you had a typical PPA with an energy generation facility, this is what you would be paying them on a monthly basis?

MS. CHEN: That's correct.

CMSR. SIMPSON: Okay.

MS. CHEN: Yes. So, prior -- so, basically, that's the case, prior to November 2023, which we discussed earlier.

So -- and, then, these are the estimated amounts that we will pay Burgess. But, then, under the PPA, it's really the lesser of. So, that's why you see Column E is trying to recognize the lesser of those two numbers. So, it's really the estimated amount. So, that's actually the number that we are taking into account in this calculation on the table.

And this number actually ties to what you just asked on YC/EA -- Attachment YC/EAD-2, Page 6, Line 20. Okay.

CMSR. SIMPSON: Okay.

MS. CHEN: Okay.

CMSR. SIMPSON: I see that.

CHAIRMAN GOLDNER: And just to follow up on Commissioner Simpson's question, in that same table, on the record request, 1-003, the same table we were talking about, there's another column, Column F, --

MS. CHEN: Uh-huh.

CHAIRMAN GOLDNER: -- where the 43 million in Column E is reduced further, which gives you the running total in Column G of the reduction -- the actual reduction in the CRF of about $30 million. Is that how to read that?

MS. CHEN: Correct. So, Column F in that table is the above- or below-market energy dollar for the Excess piece that we are recovering through the Chapter 340 portion. And, then, that is then taking into account your point, yes, Chairman, Column G. So, that's why you're seeing the 71 million beginning December 2023, is then reduced down to, as a forecast, of 39.7 million at the end of November 2024.

CHAIRMAN GOLDNER: Okay. Thank you. Anything else, Commissioner Simpson?

CMSR. SIMPSON: Yes.

And, just to confirm, for the difference between Column C and Column D, the fact that you use the lower of the two, that's a term in the contract?

MS. CHEN: Correct.

CMSR. SIMPSON: Okay. Thank you.

CHAIRMAN GOLDNER: And, so, just as a hypothetical, if energy costs were to increase from where you're expecting in this forecast, how would this table change? If energy costs, let's say, doubled, how would this table change, or would it?

MR. ROBINSON: Commissioner, if we're focused on that table in that record request, that data request, if energy prices doubled, because, again, while the plant still operates, the CRF -- or, Excess Cumulative amount still continues to be calculated. That's what's in that column that you're talking about. And you see it as -- you see it starting out as a negative number, which means it's "in the money". Burgess is -- you know, the market prices are higher than the Burgess energy price per contract. So, if market prices doubled, then a lot of those positive numbers in that column would be negative.

CHAIRMAN GOLDNER: And, then, hypothetically, you know, and I just used the doubling just for illustration, but that 12.5 million, in Column F, if energy prices went up, what we do know is that 12.5 million would be a lower number, it would be reduced, maybe it would be 1 million, maybe it would be a negative number, but we would expect to see that column change?

MR. ROBINSON: Correct.

CHAIRMAN GOLDNER: Okay.

MR. ROBINSON: Again, while the plant operates. That that's -- the terms of the PPA still apply. So, that, yes, that Excess Cumulative amount would still be continued to be calculated and reflected.

CHAIRMAN GOLDNER: Okay. So, if that -- if energy prices increased, Column F would -- the cumulative number would decrease, and, therefore, from a ratepayer perspective, ratepayers would see -- I'm trying to think of how to phrase it -- that 70 million cumulative number, instead of it going to 39.7 million, it would be better than that, it would be lower than that? It might be 35 or 30 million?

MR. ROBINSON: Hypothetically, yes.

CHAIRMAN GOLDNER: Hypothetically. And, obviously, the reverse is also true?

MR. ROBINSON: Correct. Yes. It's symmetrical.

CHAIRMAN GOLDNER: Okay. And so, this is one -- this is one of the things I couldn't figure out. So, if the check going to -- from Eversource to Burgess is just the capacity payments and the RECs, I couldn't, in my mind, reconcile that math with this math, with no other checks going to Burgess. I got -- if you could just help me sort of understand the money flow?

MR. ROBINSON: I'll be more than happy to.

If you think of, when you say "in the money", let's think of the bill, the Burgess bill, the Burgess bill includes three products: Energy, capacity, and RECs. Even though -- even though we're in this time, you know, the bill will still be prepared, you know, as long as they operate, and we will calculate what the energy expense is, capacity expense, and REC expense, in those quarterly periods. So, that calculation takes place. And we still calculate what the excess amount is, which is the difference between -- think of the total energy expense, $100, in the contract there's also -- this contract, I don't know all the nuances, but I understand at a high level, it has a lot of separate calculations.

So, your energy expense per month could be $100. And, then, within that contract, because, keep in mind, this contract was entered into with the stipulation there would be a $100 million cap above market. So, we still had to have the ability to determine what was above market. So, there was a formula in the contract that, yes, you have your energy per the contract price that was agreed to, but then you also -- then, there was a separate calculation that you made an honest purchase, times the market price. There's a calculation that comes with that market prices. That differential between the total energy and your calculated energy -- your calculated energy, or market, is your excess.

And, so, this contract is unique in the

sense, I've just seen energy calculated megawatt-hours times a price. I haven't seen one with a cap, I haven't seen one with you calculate a market on the side, in order so you can track that excess amount, to see if you're getting near that $100 million cap over time. And that's what happened in 2019, they exceeded that $100 million cap.

CHAIRMAN GOLDNER: I see. This is extremely helpful. I think I'm very clear now. So, the higher the energy price, the faster the ratepayers get paid back, if I can use that expression, because, of course, the higher the energy price, times the amount of energy, it's going to be a larger number, and, so, the payoff goes quicker. And, obviously, conversely, that's true.

But the only checks going to Burgess are in the -- until it's paid off, until the 70 million is paid off, the only checks that go to Burgess are for RECs and for capacity?

MR. ROBINSON: Correct.

CHAIRMAN GOLDNER: Thank you. This is -- this is very helpful.

Okay. I do have a couple more lines of questioning. So, we couldn't figure out what the contract price for energy was for the upcoming year, partially because we don't know exactly what the output assumption was, and partially because Section 6.1.2 of the PPA calls that a "$69.80" number, which we couldn't make work in the calculation. So, we were hoping that you could (a) help us understand what the contract price was, and how that relates to the PPA, and then what your assumption was for the factory output for the year?

MR. ROBINSON: Bear with us, Commissioner. I just have to get to the proper --

CHAIRMAN GOLDNER: Thank you.

MR. ROBINSON: And, of course, having one small screen, unlike the two large screens we have in the office, doesn't make it any easier. So, I just apologize. And I lost my reference. Now, I have to go back.

[Short pause.]

CHAIRMAN GOLDNER: While we're waiting, Attorney Wiesner, has the Company had any communication with Burgess as to it continuing as an ongoing concern? Is there any -- have you received any questions or any feedback relative to the plant's operation?

MR. WIESNER: I'm not aware that the Company has received any indication from the Burgess plant owners that there's a plan to discontinue operations. I think our understanding, and, certainly, the assumption that underlies these projections that we're looking at today, is that they continue to operate.

CHAIRMAN GOLDNER: Okay. Thank you.

MR. WIESNER: And I'll just note that, you know, there is something of a disconnect in timing, because the operating year for the plant runs December through November, and the SCRC rate period, of course, is February through January. And that's why we had to dip back into YC/EAD-2, to look at December and January, which, as Ms. Chen noted, are the first two months where there's an offset against the energy payment otherwise due to the plant owner. But, of course, those two months are not included in the estimates for the upcoming year.

CHAIRMAN GOLDNER: Very good.

MR. WIESNER: And the estimates for the upcoming year, the primary -- the primary sort of variable is the market pricing, of course. But my understanding is that our projections are based on market intelligence, if you will, forward pricing.

CHAIRMAN GOLDNER: Thank you. And I'll just note, before we turn back to the prior question, that the combination of the RECs, plus the capacity payments, that's about 35 million, is actually greater than the current ISO-New England forecast you have. So, from an ongoing concern perspective, the company is receiving actually a higher-than-market rate, even from a cash flow perspective, and even though you're not paying them anything in the intermediate term, based on the energy prices. So, in other words, the company is still receiving a significant amount of money from Eversource via the PPA, to the tune of about 35, 34 million -- I'm sorry, 29 million in the upcoming year.

MR. WIESNER: The Cumulative Reduction

and the recoupment mechanism for the Excess Cumulative Reduction, which is the portion above 100 million, only applies to energy.

CHAIRMAN GOLDNER: Yes.

MR. WIESNER: And capacity and RECs are separate.

CHAIRMAN GOLDNER: One hundred percent, yes. Thank you.

MR. WIESNER: I also, for what it's worth, I was able to pull up the amended and restated PPA that was approved back in 2011. And, in the pricing section, there is a base price, it is also adjusted by the "Wood Price Adjustment".

CHAIRMAN GOLDNER: A hundred percent.

MR. WIESNER: So, that's, you know, one of the reasons why we might have a different applicable purchase price than the 69.80 that you see in the top-line number.

CHAIRMAN GOLDNER: Thank you. And I'm not looking at the exact spreadsheet, but I did note that you had a spreadsheet with the Wood Factor number broken out separately. So, that was -- thank you for the clarity on that. That was broken out on your spreadsheets.

But the base price should still line up to the 69.80, which we could not reconcile.

MR. ROBINSON: And it does, Commissioner.

CHAIRMAN GOLDNER: It does?

MR. ROBINSON: Yes. I'm looking at the forecast right now. And we start with the base price.

CHAIRMAN GOLDNER: Okay.

MR. ROBINSON: And, then, we're talking about that adjustment that Mr. Wiesner just talked about.

CHAIRMAN GOLDNER: Okay.

MR. ROBINSON: So, in total, for a forecast price, we have $87.10.

CHAIRMAN GOLDNER: 87.10. For the upcoming year?

MR. ROBINSON: Starting February of 2024, yes. That's what our forecast is based on. And that 87.10 is based on the base price, as you mentioned, of 69.80, and then the -- what I'll call the "adjuster", is $17.30?

CMSR. SIMPSON: Do you have a tab and

line that you could reference for us please?

MR. ROBINSON: Yes. In the Excel file that's filed, Commissioner?

CMSR. SIMPSON: Yes. We're looking at that.

MR. ROBINSON: It's in a tab called "wp Burgess Forecast "fcst" November '23 to January of '25". That's the name of the tab.

So, in the lower left-hand corner, if you right-click, and just scroll down the names of the worksheets.

CMSR. SIMPSON: Yes. "Wp_Burgess_fcst"?

MR. ROBINSON: Yes.

CMSR. SIMPSON: "November '23"?

MR. ROBINSON: Yes.

CMSR. SIMPSON: Okay. All the way to is right?

MR. ROBINSON: Yes. Correct. And what I'm looking at right now is, on Excel Line 85, starting Excel Column AB, which is the base -- which is the base energy price, dollars per megawatt-hour.

CMSR. SIMPSON: Yes.

MR. ROBINSON: And I'm looking at Column AE, which is what I'll call the "adjuster" of $17.30. And, then, Column AF, the sum of the adjuster, the $17.30, plus the base price of 69.80, yields the $87.10 total energy price.

CMSR. SIMPSON: This is really helpful.

CHAIRMAN GOLDNER: Yes.

CMSR. SIMPSON: Thank you.

CHAIRMAN GOLDNER: Yes. This is very helpful. So, this CRF, this "Cumulative Reduction Fund", which, Attorney Wiesner, I think you said it was "not actually a fund". So, it's a bit of a misnomer, right? There's not a pile of money sitting out there. It's just called a "Fund". Is that --

MR. WIESNER: I think, well, the "Cumulative Reduction Factor".

CHAIRMAN GOLDNER: Is it "Factor"? Okay.

MR. WIESNER: Yes. And that, and I think the DOE characterized it as an "accounting mechanism", and I think I would probably agree with that. It's a tracking measure. And that's why, and I think Mr. Robinson was alluding to this, that, even while the plant owner is getting zero dollars for its energy payment, the Cumulative Reduction may increase, depending on what's going on in the market, and the actual value, if you will, at LMPs, to the energy that the Company is buying from the plant.

CHAIRMAN GOLDNER: Thank you. I think I'm understanding better.

So, if we -- as we look into the coming year, the company is going to produce 500 megawatts or so, is that about what you're using?

I know it's capable of more, but it's --

CMSR. SIMPSON: I think it's terawatt-hours, 500 terawatt-hours.

CHAIRMAN GOLDNER: Five hundred -- well, it's a 75-megawatt plant.

MR. WIESNER: There's a --

CHAIRMAN GOLDNER: Yes.

CMSR. SIMPSON: I'm sorry.

CHAIRMAN GOLDNER: Go ahead.

MR. ROBINSON: I'll start again. Again, if we look at -- Commissioner Simpson, if you're still looking at that worksheet?

CMSR. SIMPSON: Yes.

MR. ROBINSON: If you now go to Excel Column L, Excel Line 84, you see the forecast megawatt-hours.

CHAIRMAN GOLDNER: So, what's the total for the year, total megawatt-hours?

MR. ROBINSON: For the February through January timeframe?

CHAIRMAN GOLDNER: Yes.

MR. ROBINSON: If we just simply add February through January, in Excel Column L, I come up with a total of --

[Court reporter interruption.]

MR. ROBINSON: Oh, I'm sorry. 498,863 megawatt-hours.

MR. WIESNER: It's worth noting, I think, that, under the PPA, there is a 500,000 megawatt-hour annual cap on the energy that needs to be purchased at the contract price. And, then, above that, there's a different pricing mechanism that applies.

CHAIRMAN GOLDNER: Yes. Yes. Thank you.

So, the $70.5 million that needs to be

paid off by Burgess, before we resume the sort of normal PPA, that gets reduced by their output, times $87.10 a megawatt-hour, correct?

[No verbal response.]

CHAIRMAN GOLDNER: So, the reduction is not really -- it's not based on the ISO-New England price, which is, today, about $40 a megawatt-hour, it's roughly twice that. So, that that rate of the 70.5 million being reduced is the contract rate, and not the ISO-New England rate?

[No verbal response.]

CHAIRMAN GOLDNER: Okay. So, it will be reduced much faster.

I'll have to do the math on my own time to make sure it makes sense to me.

Yes?

MR. YOUNG: So, Mr. Chairman, I think, just to circle back on I think something that was had said a little while ago, regarding the checks distributed by the Company to Burgess, I believe the Chairman said that there would only be the two checks, the RECs and the capacity. But, in the scenario, which was discussed, I think, that if -- it's my understanding that, if prices did go up, and Eversource did owe an amount over the 5,883,000, that there would be an additional check they would cut.

And I just wanted to make a clarification of that.

CHAIRMAN GOLDNER: Thank you. Can the Company confirm that? Because I would think it would be a cumulative issue, as opposed to a month-by-month issue. But, to the point of Attorney Young, that's a good question.

[Court reporter interruption.]

MR. YOUNG: So, I do believe it is a month-to-month calculation, based on the terms of the PPA.

MR. WIESNER: If there is monthly billing. I'm not sure I fully understood what Attorney Young just said, in terms of impacts.

CMSR. SIMPSON: Maybe I could try through a question.

If I look at response, PUC 1-003, Column C and D, the lesser amount of those two is reflected in the -- both the ECR balance and the payment, correct?

MR. ROBINSON: Correct.

CMSR. SIMPSON: So, if the estimated energy payment, in Column D, were higher than your amortization schedule, it would be the figure in your amortization schedule that would govern on that month, correct?

[Atty. Young indicating in the affirmative.]

CMSR. SIMPSON: Okay. And, --

MR. WIESNER: If they produced more than expected.

MR. ROBINSON: Correct.

CMSR. SIMPSON: Okay.

MR. WIESNER: Then, yes, that's correct.

CMSR. SIMPSON: Thank you.

MR. WIESNER: These are all the estimates. You know, this table, which I found enormously helpful to get a better handle on how this all works, these numbers are straight out of the schedules.

CMSR. SIMPSON: Thank you.

CHAIRMAN GOLDNER: And, I'm sorry. So, additional follow-up.

So, on Column D, the only way, since that's already the estimate that's locked into your plan, the only way that could change is if the output increased, or could the pricing also change, on Column D?

MS. CHEN: Yes. It's only the output, because it's the contract price.

CHAIRMAN GOLDNER: Okay. So, they would have a very difficult time, you know, increasing their output by 50 percent, or something like.

So, Attorney Young, to your point, that is an excellent clarification. It would require a significant output difference in order to swamp the 5,883. But your point is right, which is, it's possible, if the output increases accordingly. Thank you.

Okay. Let me continue with a line of questioning here.

So, let's move to the REC piece of the calculation. And I'm going to go back to YC/EAD-1, Page 6, same table we were looking at before. And it shows a REC price that averages about $61.25 for the year. And I do understand the rollover from prior, so that there's -- it's not exactly the same number in each time period.

I at least was confused, when I read the PPA, because I couldn't understand why it was $61. I read 6.1.2(c) of the PPA to talk about, I think, 70 percent of the Class I REC price. I believe $61 is the Class I REC price. So, I didn't -- I don't understand why the full ACP is being paid to Burgess?

[Short pause.]

MS. CHEN: Can I just confirm? Are you, Chairman, are you wondering why is this "61.35", and not 81.8? Or, are you -- I'm trying to understand better.

CHAIRMAN GOLDNER: Thank you for the opportunity to clarify.

So, on Line 13, it has numbers ranging from "61.35" to "60.44". My question is, is that the PPA, the way I read the PPA, it says that "Eversource is to apply the ACP", which for Class I non-thermal REC this fits, but then "Eversource is to apply a factor of 70 percent" in the PPA, in 6.1.2 of the PPA.

So, I'm not sure why the full ACP is

being applied?

MS. CHEN: I am not, like, familiar with the PPA, *per se*. But, if I look at that same workpaper, the Burgess Forecast, Excel file paper -- workpaper, it looks like it's 75 percent of the ACP.

CHAIRMAN GOLDNER: And that may be, there's different time periods that apply, in Section (c). Where do I find that "70 percent" or "75 percent"? Where do I see that?

MS. CHEN: So, it's the workpaper, "Burgess Forecast November '23 to January '25" tab.

CHAIRMAN GOLDNER: I'm sorry, which document are we in?

MS. CHEN: Oh. I'm sorry. It's the Excel file for the SCRC. And it's one of the Excel tabs.

CHAIRMAN GOLDNER: Okay. I'm going to look at Commissioner Simpson's screen.

CMSR. SIMPSON: It's the same --

MS. CHEN: It's the same tab, Excel spreadsheet.

CMSR. SIMPSON: And if you could do

line and column, please?

MS. CHEN: Yes. So, it's Line 85, Column AH, AI, and AJ. I believe that's what you're referring to.

CHAIRMAN GOLDNER: So, on the Schedule YC/EAD-1, it looks like you're cutting a check to Burgess for 25 million, based on 400,000 RECs, times the $61 price. So, are you not cutting a $25 million check to Burgess? Where does the 75 percent enter in on your schedules here?

MR. ROBINSON: In our schedules, Commissioner, we just reflect the 61.35 price. That's what we pull from the forecast. That's the projected dollar per megawatt-hour price per REC.

As far as breaking it down between the ACP portion, we haven't done that. You know, we just picked up that net number, the 61.35, in our forecast.

CHAIRMAN GOLDNER: Okay. What I would like, and this should be a simple calculation, but, prior to the meeting on Friday -- or, the hearing Friday, I'd like to understand exactly how much, based on this forecast, that Eversource will cut checks to Burgess for?

So, it looks like on the chart, and my understanding from our earlier conversation was that the check would be for 24.5 million, on Line 14, plus 4.1 million, on Line 9. But it sounds like that's not quite right. The check that's being cut to Burgess will be something less than that.

So, I'd like a clarification from the Company on how much is actually going to Burgess.

MR. ROBINSON: I can answer that.

CHAIRMAN GOLDNER: Yes.

MR. ROBINSON: The checks, the checks, if you will, the payments for the invoices, because we get invoiced for the RECs, and we make a separate payment for the RECs, that payment will be made to Burgess, again, assuming as long as they operate.

CHAIRMAN GOLDNER: And, so, how much will those checks be for the February -- the year beginning February 1st? Because I read YC/EAD-1 to say that the four checks, the total that we're talking about here, will be 24.5 million.

MR. ROBINSON: Yes.

CHAIRMAN GOLDNER: That will be the checks?

MR. ROBINSON: That's aligned historically --

CHAIRMAN GOLDNER: Okay.

MR. ROBINSON: -- with what the REC payments have been for the Burgess contract.

CHAIRMAN GOLDNER: Okay. And, then, how do I think about the "75 percent"? Where does that enter into this calculation?

MR. ROBINSON: The 75 percent would be worked into the billing itself. Because what you would see on the bill would be the megawatt-hours, times that 61.35 rate. So, it would be built in the bill, there's no -- at least I don't believe, I would have to look at that bill, to see if it does go through the math of getting to the 61.35. I believe the bill just has the end result, the 61.35.

CHAIRMAN GOLDNER: Okay. Maybe I'll point my next question to Mr. Eckberg and the DOE team.

So, I believe, I know that the Department sets the rates for RECs. I'm showing in my table here, from the DOE website, that a Class I non-thermal REC for 2023, I don't exactly understand why Burgess would be non-thermal, it seems like thermal energy, but that appears to be the category that they're in. And, then, I don't understand the 75 percent, and how that relates to the check for 25 million?

MR. ECKBERG: Just to be clear, the Department sets the ACP price for each RPS category.

CHAIRMAN GOLDNER: Thank you.

MR. ECKBERG: We don't set the market price on RECs. We'd be glad to do that, but it's not -- it's out of the scope of our powers, I believe.

CMSR. SIMPSON: Be a challenge to market then, wouldn't it?

MR. ECKBERG: Yes. So, I believe the currently published price for 2023 RECs, that is RECs which are created corresponding to energy that was produced in 2023, for Class I non-thermal, is $61.18, according to the table on the DOE's website.

And this is, in fact, one of the areas

that we plan to explore further with the Company in its -- in our upcoming technical session. As we mentioned in our technical statement, we do believe that, generally, the Company is implementing the PPA terms generally correctly. But there are still, within that statement, I think in the conclusion of my technical statement, I said that "the Department will continue to review the details of the Company's filing", which covers these Burgess details, as well as other SCRC elements.

And, so, this very issue that you're raising, Mr. Chairman, is one of the issues that we wanted to explore further with the Company, to ensure that our understanding, which sounds, on the face of it, to be similar to your understanding, about application of a reduction factor, you might say, of 75 percent, or 70 percent, depending upon which operating year of the contract we're in. There is sort of a declining factor that gets applied.

And, so, I would agree with you. This is a number that needs further exploration. And we will certainly pursue that further with the

Company. And, hopefully, at the time of our upcoming hearing, one or the other of us will be able to accurately and provide an explanation to you about this situation.

CHAIRMAN GOLDNER: Thank you. Mr. Wiesner, before you go, just real quick, a couple of clarifications for Mr. Eckberg.

Would you agree that Burgess is classified as a "Class I non-thermal REC", is that the appropriate classification, as opposed to Class I thermal or Class III?

MR. ECKBERG: Yes. That is correct. Burgess is certified to produce Class I RECs. Those are RECs that correspond to electrical energy. Yes, the plant produces its electricity by use of thermal energy, it burns wood chips to make steam, which turn turbines and produce electricity. The thermal RECs are RECs which are a subcategory of the Class I. Those are actually thermal energy. There are wood chip boilers, both residential and commercial-size boilers, which produce heat. We heat a number of buildings all around the state with wood energy. Those could be wood pellets, those could be processed dry chips, they could be wet chips. But that's the thermal energy, the heat that heats buildings. Those -- that can be a separate kind of RECs, which has a separate certification process for it.

CHAIRMAN GOLDNER: Okay.

MR. ECKBERG: But these, yes, the Burgess produces Class I electrical RECs.

CHAIRMAN GOLDNER: Thank you. Thank you. Mr. Wiesner, I think you --

MR. WIESNER: I just wanted to muddy the waters a little further.

So, when we speak of the "75 percent", under the REC pricing payments, REC pricing provisions of the PPA, it's actually 75 percent of the defined term "Renewable Products Payment", which is defined in Section 1.61. And that references the ACP schedule that was in effect at the time that the contract was entered into, and says that the defined term "Renewable Products Payment" will not be less than that schedule.

So, one way to look at that is, the intent of the contracting parties was to grandfather the higher ACP, if you will. So, the

ACP that you would see the Department of Energy is setting based on current law is not necessarily the ACP that is driving this definition of "Renewables Product Payment". So, that's why we're seeing 75 percent of 81.80, I think it is, rather than the current ACP.

And, as I sit here today, I don't recall enough about the history of the Class I ACP to know, you know, why that number is the number, and why it is the correct number.

But I believe that there was an intent of the contracting parties, and approved by the PUC in 2011, to not have the applicable ACP measure drop below a certain level, regardless of any subsequent changes in law by the Legislature.

CMSR. SIMPSON: That definitely muddies the water a little bit. I'll dig a little bit deeper.

What we were initially wondering about was, in the PPA, Section 6.1.2(c), where the New Hampshire Class I REC terms are articulated, there are specific sections, I through IV, that pertain to the defined term of "operating years". And that operating -- the relevant operating year presumably has an impact on the multiplier for the REC price. And it would seem that we would be in one of the subsequent operating years, confirmation on that would be helpful, that leads to the multiplier.

And, then, I guess the new question that you've raised for us is, "what is the applicable ACP that we should be referencing?"

So, all good questions, and worthy of further analysis.

CHAIRMAN GOLDNER: Does the Department have an opinion on the applicable ACP?

MR. ECKBERG: To the extent you're asking for a legal opinion, I would defer to my attorney. To the extent that you're asking for an opinion about the dollar value per REC, I think that we would have to investigate the muddy waters, which have been stirred up by Attorney Wiesner, and try and understand the nuances of the language that are in the approved, amended PPA, and see if -- see if we eventually agree with the Company's interpretation, or whether we disagree.

So, I can't give you a direct answer at

the moment, I guess.

CHAIRMAN GOLDNER: Attorney Young, do you have a legal opinion on the correct ACP?

MR. YOUNG: I think I would echo Mr. Eckberg's statements, that we will certainly review this with the Company. But, at this time, we take no position on that.

CHAIRMAN GOLDNER: Okay. Thank you. Yes, just even the small things, like it's 61.35, for most of the ACPs, and then the Department has "61.18" on the website, it just nothing -- we can't get anything to tie.

So, the bigger issue is "75 percent of what?" is the big issue here. And I think it is 75 percent. But it talks about Operating Years 13 through 17, and so on.

What was Operating Year zero? Does anyone know the answer to that question? What Operating Year are we in now?

I thought it was 2010 was the -- no?

MR. ROBINSON: It's just a guess on my part. I believe we're in Operating Year 11, but I would have to confirm that. Because, again, I think -- I believe the first Operating Year was

2013.

CHAIRMAN GOLDNER: Thirteen, okay.

MR. ROBINSON: I think that's when -- I think that's when the actual production commenced at the facility.

CMSR. SIMPSON: And what Operating Year would be in for this SCRC?

MR. ROBINSON: This SCRC, I think -- I think the new Operating Year, when I said "I believe it's Operating Year 11", would be November 2023 -- I mean, December 2023 to November 2024.

CMSR. SIMPSON: So, we would be in two Operating Years then?

MR. ROBINSON: So, yes. Yes. Exactly. And that's where Mr. Wiesner tried to explain that our rate year in the SCRC runs from February through January, whereas the Operating Years, on the Burgess PPA contract, are a different fiscal period.

CHAIRMAN GOLDNER: Yes.

CMSR. SIMPSON: Thank you.

CHAIRMAN GOLDNER: Okay. Well, we'll await the technical conference, that sounds like it will be enlightening.

But, yes. We would like a clarification on why the REC payment is for the full ACP, what appears to be the full ACP, as opposed to 75 percent, or something of that number? So, that's a pretty big difference that we'll talk about on next Friday.

And a question for Mr. Eckberg. Just for the Commission's situational awareness, what is the current market price of a Class I non-thermal REC today, if we were to go try to buy one?

MR. ECKBERG: I would probably defer to the Company's experts. I know, in the recent Energy Service filings that we have had from all three regulated utilities, there is information about market prices on RECs. We do have access to a single information source, which can provide us with approximately monthly insights into the market prices for RECs. I have not checked that for quite some time.

But we could certainly look at it. And I think the Company could, probably through their Markets department, also provide insight into what current market prices are.

CHAIRMAN GOLDNER: Do you have any rough idea of what the market is today for a Class I REC?

MR. ROBINSON: If you just give me a second?

CHAIRMAN GOLDNER: Oh, please.

MR. ROBINSON: That would have been, what Mr. Eckberg is referring to, would have been included in our recent Energy Service filing. So, if you can just give me a minute to pull that up to see. Because, in order to set the RPS adder, that's where those forecast prices, by class, are reflected.

CHAIRMAN GOLDNER: Okay.

MR. ROBINSON: So, if you can just bear with me a moment?

CHAIRMAN GOLDNER: Thank you. Yes. Please take your time.

[Short pause.]

MR. ROBINSON: If you just give me another moment, I got disconnected.

CHAIRMAN GOLDNER: Take your time.

MR. ROBINSON: So, I apologize.

MR. ECKBERG: If I may, I believe, in the workpaper, which is part of the large Excel spreadsheet, which the Company has provided, the workpaper that we've been looking at numerous times here this afternoon, with information about Burgess, there is a column there, Column S, as in "Stephen", which I believe shows the Class I REC transfer price, which I believe is the number that Mr. Robinson --

MR. ROBINSON: Yes.

MR. ECKBERG: -- is looking up. And that number here, in the spreadsheet, I believe is $38.50.

MR. ROBINSON: Yes.

MR. ECKBERG: So, that is the Eversource's indication of the Class I market price, which they would use for figuring out their RPS adder.

MR. ROBINSON: That's correct.

CHAIRMAN GOLDNER: Thank you. Thank you.

So, just to kind of capture the "big picture" here. So, the market price for a Class I REC is something like $40. And, at least on the spreadsheet, Burgess is getting $60. So, that's a, you know, a premium over the market. A very similar analysis goes for the capacity, Burgess is getting around twice the market. And, then, of course, we've talked about the market rate versus the contract rate for energy itself, which is another sort of 50 percent premium.

So, by my calculation, Burgess, in a normal environment, that is an environment where they're not paying back $70 million, is getting about $110 a megawatt-hour for electricity.

So, it just struck me, when reviewing the docket, how large those numbers were, and how large the premiums were. So, and it's just in the spirit of trying to fully understand the contract.

[Cmsr. Simpson and Atty. Speidel conferring.]

CHAIRMAN GOLDNER: Just have one final question for the Company, after my colleagues get things sorted.

[Cmsr. Simpson and Atty. Speidel conferring.]

CHAIRMAN GOLDNER: My final question,

before I'll turn it back to Commissioner Simpson for any follow-up, is just, has the Company made any kind of a forecast, in terms of when the 70.5 million will be fully paid back to ratepayers per the PPA?

MS. CHEN: So, I'll have to refer back to that attachment, PUC 1-003, as part of the data requests, because that's the twelve months ended November 2024. And, then, if we -- we do have two more additional months as part of this filing schedule, which is going to be December 2024 and January 2025, that can be put into this table.

But, beyond that, we do not have any information at this point.

CHAIRMAN GOLDNER: Okay. I would encourage the Company, for Friday's hearing, to understand, when they project the 70 million to be fully paid back, I think that will be a topic of interest to the public.

All right. Very good. So, let's do this. Let's take a brief break, so we can confer, to see if there's anything else that the Commissioners need to follow up on, or if the parties as well, to just take a brief break, and return at 25 of, and then wrap things up. Thank you.

(Recess taken at 2:24 p.m., and the status conference resumed at 2:41 p.m.)

CHAIRMAN GOLDNER: So, just a couple of quick follow-up questions.

A question for you, Attorney Wiesner, or at least the Company. When -- what does Eversource do with the energy it purchases from Burgess? Does it -- how does it financialize that transaction? Does it resell it? Does it net it against existing load? How is it financialized?

MR. WIESNER: My understanding, and I'll be corrected, hopefully, if I'm wrong, is that it is effectively sold into the ISO-New England market, at LMPs. So, we were almost simultaneously buying it and selling it, if you will.

CHAIRMAN GOLDNER: Okay. And it's all a net-zero transaction to the Company, right? I don't think the Company's making or losing money on the transaction?

MR. WIESNER: No.

CHAIRMAN GOLDNER: All right.

CMSR. SIMPSON: Just I can't help but ask. Is that not a sale for resale then?

MR. WIESNER: I mean, it's a wholesale sale, yes. Yes. It's a wholesale purchase and sale. I mean, there's -- I think it was recognized that this is a wholesale power purchase contract that also includes RECs, as well as energy and capacity, which are products which are sold through the ISO-New England regional market.

CHAIRMAN GOLDNER: And, then, maybe just one other sort of request in preparation for the hearing on Friday.

We're still unable to follow the math on the Part 2 with Burgess, and then the Chapter 340 with Burgess. There's a lot of numbers moving in and out of spreadsheets, and we can't track what's going on. So, if the Company could be prepared with sort of a holistic view. It looks to us like there's some kind of carryforward from the prior period that's large, that is entering the calculus. Then, there's lot of math, where there's a lot of credits going on in Part 2, and there's a lot of debits going on in Chapter 340. The net is something like zero, but it's unfavorable to last year. That's, I think, the carryforward. So, we're vexed at the calculation for Burgess, in this time period and the prior time period.

So, to the extent that you can come prepared with something that helps us understand what's happening with the Burgess alone, that would be extremely helpful. We can't follow the calculations.

[Chairman Goldner and Atty. Speidel conferring, and then Chairman Goldner and Cmsr. Simpson conferring.]

CHAIRMAN GOLDNER: Okay. So, I think, as we get ready for the hearing on Friday, it's our -- we would like to be able to go through the entire SCRC, make sure that we understand what's going on, and ultimately approve it. If we struggle with the complexity of the arrangement with Burgess, we may have to move forward with something on a provisional basis. We just need -- we have to be able to understand the calculations.

So, the Commission will note in this status conference that the "provisional" basis is a possibility in the hearing for next week. And, if that does come to pass, we'll, of course, issue a Supplemental Order of Notice, and target a hearing in February, to wrap this up as quickly as possible.

So, we do, Commissioner Simpson and I, both feel like we made considerable progress today. And we appreciate everyone, everyone here today, in terms of helping us understand. This is a considerable improvement over where we were a couple of hours ago.

I'll just pause here, and see if there's anything else that the parties would like to discuss today?

[Atty. Young indicating in the negative.]

CHAIRMAN GOLDNER: Okay. All right. Seeing none. So, we'll conclude today's status conference. We thank the Company, the Department of Energy, and the OCA for their participation today and answers to our questions.

We have nothing further, and the status conference is adjourned. Thank you.

(Whereupon the status conference was adjourned at 2:46 p.m.)