

**THE STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION**

Public Service Company of New Hampshire
d/b/a Eversource Energy

Docket No. DE 21-077

2021 Energy Service Solicitation

**MOTION FOR REMOVAL OF THE ISSUE OF RECOVERY OF \$1.6 MILLION IN REC
PURCHASES AND RPS COMPLIANCE FROM THE DECEMBER EVERSOURCE ENERGY
SERVICE HEARING FOR ADDITIONAL PROCESS**

Pursuant to N.H. Code Admin. Rules Puc 203.07, Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource,” or “the Company”) moves the Public Utilities Commission (“Commission”) to review and approve all costs relating to 2020 Renewable Portfolio Standard (“RPS”) compliance, including the \$1.6 million of Renewable Energy Credit (“REC”) purchases made over the Alternative Compliance Payment (“ACP”) price, through a process separate from Eversource’s default Energy Service (“Energy Service” or “ES”) rate setting proceeding.

In support of this motion, Eversource offers the following:

1. On June 17, 2021 Eversource filed a petition for an adjustment to its ES rate for effect on August 1, 2021 (the “Filing”). On June 22, 2021, the Commission held a hearing to consider the Filing, which the Commission approved in Order No. 26,491 (June 24, 2021). In that Order, the Commission directed the Company to work with then Commission staff (now Department of Energy staff) (“Staff”) to review the RPS compliance costs included in the Filing’s proposed ES rate. Specifically, the Commission directed that Eversource and Staff review \$1.6 million in Class III REC purchases the Company made over the ACP price for compliance year 2020. The Commission also ordered that any disagreement over possible adjustments resulting from that review between Staff and Eversource be presented to the Commission for review and resolution in the Company’s December 2021 ES adjudication. (Order at 7).

2. Staff and Eversource held a technical session on August 5, 2021 to discuss the RPS compliance costs and REC purchasing generally, and specifically REC Class III purchasing for compliance year 2020. In that technical session, the Company presented an overview of its REC purchasing process which has saved Eversource default service customers over \$20 million when compared to purchasing at the ACP price, including the \$1.6 million purchased over the ACP price in 2020. During that session, there was also a discussion about regular legislative and regulatory adjustments to the volume and price of RECs and ACPs, as well as the legislative context surrounding the 2020 ACP price in particular.

3. On September 20, 2021 Staff issued a recommendation to the Commission (“Staff Recommendation”), that advised the Commission to disallow the \$1.6 million in REC purchases made by Eversource over the ACP price. Staff’s reasoning for recommending a disallowance is Staff’s belief that “a regulated utility’s purchase of RECs for a cost higher than the ACP is both inconsistent with the law and *per se* imprudent . . . notwithstanding the uncertain status of pending legislation at any given time.” (Staff recommendation at 4). This conclusion was reached from Staff’s interpretation of RSA 362-F:10, II that “the applicable ACP rate is intended to effectively *serve as a cap on the market price of RECs.*” (Staff recommendation at 3, emphasis added).

4. Respectfully, the Company disagrees with the interpretation that any purchase over the ACP is inconsistent with the law or *per se* imprudent. The ACP price does not create a cap on the market price of RECs, as evidenced by the Company’s purchase of the above-ACP priced RECs, which reflected the then-market rate. Additionally, RSA 362-F:10, II only sets the criteria for when ACPs are allowed, it does not inversely prohibit purchases for RECs above the ACP price. Consequently, since RSA 362-F:10, II does not create a cap on REC market prices or prohibit purchases over the ACP price, such purchases cannot be *per se* imprudent. Rather, such purchases must be reviewed within the context of the facts and circumstances surrounding the purchase to determine whether any purchase was prudent.

5. The July 2020 RFP resulted in 84,500 Class III RECs purchased from two separate suppliers at then current market prices (within a \$6 range across 7 tranches), reflecting the then current “market view.” Eversource declined to purchase an additional 30,500 higher priced Class III RECs in two

additional tranches offered from one of the suppliers, because 84,500 RECs represented 30% of Eversource's then projected annual requirement, and the Company wanted to leave room to dollar-cost average over a longer time frame with subsequent periodic purchases. On July 1, 2020, prior to conducting the RFP, legislation (HB 1234) had passed revising the 2020 Class III ACP to \$55/REC (rather than the originally legislated 2020 value of \$34.54/REC) as had happened in 2017, 2018, and 2019. HB 1234 was viewed by Eversource as recurring, routine, legislative activity consistent with prior legislation, and the REC market reflected the same view as evidenced by the market prices for RECs that were supplied in response to Eversource's RFP. Eversource consummated transactions under the RFP on July 15, 2020. Upon the Governor's veto on July 28, 2020, ultimately upheld in September, the anticipated ACP for 2020 NH Class III was set at \$34.54, resulting in the payment of \$1.6 million over the ACP price of \$34.54. It is not surprising, given the passage of HB 1234, similar to legislative action taken in the previous five years, that the market held the view that the then current market value of Class III RECs was in the low \$50 price range.¹

6. In this case, the REC purchases challenged by Staff are prudent and the costs of them should be recovered after further process and consideration of this matter. The prudence standard in New Hampshire is rooted in the context of any particular decision at the time the decision was made: "prudence judges an investment or expenditure in the light of what due care required at the time an investment or expenditure was planned and made." *Appeal of Conservation Law Foundation*, 127 N.H. 606, 638 (1986). Put another way, "The test of due care asks what a reasonable person would do under the circumstances existing at the time of a decision. *Fitzpatrick v. Public Service Co. of N.H.*, 101 N.H. 35 (1957). The legislative context surrounding the purchases described above and in the attached testimony of James G. Daly, James R. Shuckerow and Frederick B. White, when combined with the Company's proven process of relying on periodic procurements of RECs similar to using Dollar Cost Averaging in making financial investments to avoid market volatility, supports the conclusion that the

¹ Testimony of James G. Daly, James R. Shuckerow and Frederick B. White, attachment A to this motion, at page 7, lines 1-17.

Company acted reasonably based on the information it had at the time of purchase. The approach of periodic procurements has resulted in over \$20 million in customer savings in just four years compared with purchasing ACPs. Given that Eversource paid the price reflected in the market amidst legislative uncertainty, and that Eversource's practice has yielded substantial customer benefits, the totality of the circumstances demonstrate that Eversource made a prudent decision to purchase the RECs in question by utilizing a proven successful process and acting upon the best information it had at the time of purchase.

7. Additionally, Staff's interpretation of REC purchases as *per se* imprudent is unsound given the ability to carry forward RECs for up to two years. As noted in the attached supporting testimony, the Commission has the authority to adjust the purchasing requirement for Class III RECs and has done so sometimes late into the compliance year, including in April of 2021, just two months before the end of the compliance year.² If the adjustment comes late in the year it could result in after-the-fact over-purchasing of RECs for the current compliance year that then must be carried forward to one of the next two compliance years when the ACP may be altered again. This regulatory circumstance, when coupled with the variable of legislative adjustments to the ACP price in any given year, creates uncertainty as to whether RECs purchased at a given ACP price during one compliance year will be above or below the ACP price when they are used for compliance, depending on the year to which those RECs are eventually applied. Accordingly, not only is a *per se* definition of imprudence out of line with the general test of reasonableness, it cannot reasonably be applied in these circumstances when the possibility of *post hoc* adjustments is ever-present due to the governance structure of RPS compliance in New Hampshire.

8. In support of its position and in response to the Staff Recommendation, Eversource submits the attached testimony and supporting information of James G. Daly, James R. Shuckerow and Frederick B. White. The included information demonstrates the substantial benefits that Eversource has provided

² See Testimony of James G. Daly, James R. Shuckerow and Frederick B. White, at page 5, lines 6-13.

and shows that disallowance of the challenged costs is inappropriate. Moreover, should the Commission still disallow the challenged costs, the attached testimony demonstrates why Eversource should be relieved of the obligation to manage the RPS obligation further.

9. Ultimately, the Commission's decision on this issue of REC purchases could have significant ramifications on the multi-million dollar process of RPS compliance. In its current iteration, the Company receives no benefit from managing the tens of millions of dollars in RECs it purchases annually to satisfy RPS compliance. Adoption of Staff's recommendation that any purchase over the ACP price is *per se* imprudent would put the Company's existing REC purchasing process wholly at risk by eliminating such contextual factors as overall customer savings, the legislative and regulatory uncertainty under which RECs are purchased, and the fact that use of periodic purchasing throughout the year is less volatile than trying to "time the market". Should these elements, and all other potential considerations, be eliminated from a prudence determination for the REC purchases at issue in favor of a *per se* imprudence standard, one way to mitigate the risk created by such a standard moving forward would be for the Company to exclusively fulfill RPS obligations utilizing ACPs . Alternatively, rather than merely purchase RECs at the ACP, if the potential for any REC purchases were to be considered *per se* imprudent when made by utilities, a just and reasonable course moving forward would be to alleviate the utilities of this risk-only process and shift RPS compliance obligations to the competitive supply market that is designed to deal with such risk.

10. Given the complexity of the REC purchases at issue and the possible ramifications to RPS compliance as a whole, as well as the significant implications upon the "rights, duties and privileges" of the movant by a Commission decision, it is the Company's assessment that recovery of the \$1.6 million in REC purchases, and REC purchases in general would be best decided as a separate matter from Eversource's next ES rate adjustment hearing in December, as further process is needed by all parties so that the Commission may fully and properly consider the matter pursuant to RSA 541-A. Additional process to the December ES hearing will also create greater administrative efficiency of

both the December 2021 and June 2022 ES hearing processes which have abbreviated timelines, and will allow Eversource to properly account for any decision on this issue in its June 2022 filing.³

³ The June 2022 filing includes the annual August reconciliation which will account for the \$1.6 million in REC purchases at issue.

WHEREFORE, Eversource respectfully requests that the Commission:

1. Remove the issue of recovery of the \$1.6 million in REC purchases at issue from the rest of the December adjustment to the Eversource Energy Service rate proceeding by either scheduling a separate, additional hearing solely on this issue or opening a new adjudicative docket to fully consider this matter; and
2. Grant such other and further relief as may be just and proper.

Dated this 7th day of October, 2021

Respectfully submitted,

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

By Its Attorney



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Certificate of Service

I hereby certify that on October 7, 2021, a copy of the foregoing Motion has been forwarded to the parties listed on the Commission's service list in this docket.



Jessica A. Chiavara