

EXHIBIT 1



Bill Text: NH SB271 | 2022 | Regular Session | Amended New Hampshire Senate Bill 271 (***Prior Session Legislation***)

Bill Title: Relative to the Burgess BioPower facility.

Spectrum: Moderate Partisan Bill (Republican 5-1)

Status: (*Passed*) 2022-06-28 - Signed by the Governor on 06/24/2022; Chapter 0275; Effective 06/24/2022 [SB271 Detail]

Download: [New_Hampshire-2022-SB271-Amended.html](#)

SB 271 - AS AMENDED BY THE HOUSE

03/24/2022 1107s
5May2022... 1788h

2022 SESSION

22-3039
12/10

SENATE BILL **271**

AN ACT relative to the Burgess BioPower facility.

SPONSORS: Sen. Bradley, Dist 3; Sen. Hennessey, Dist 1; Sen. Watters, Dist 4; Sen. Avard, Dist 12; Sen. Ward, Dist 8; Sen. Giuda, Dist 2

COMMITTEE: Energy and Natural Resources

AMENDED ANALYSIS

This bill requires the public utilities commission to revise certain orders relative to the Burgess BioPower plant in Berlin.

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Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struck through~~].
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.
03/24/2022 1107s
5May2022... 1788h 22-3039
12/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT relative to the Burgess BioPower facility.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Burgess BioPower Plant. 2018, 340:1-2 are repealed and reenacted to read as follows:

340:1 Findings.

I. The general court finds that the continued operation of the Burgess BioPower plant in Berlin: (a) is desirable to the energy infrastructure of the state of New Hampshire; (b) is a source of indigenously-sourced, reliable baseload power that contributes to regional fuel security and reliability of the regional electricity grid; (c) is important for the attainment of renewable energy portfolio standard goals of fuel diversity, capacity, sustainability and energy independence; (d) is significant to the continued health of New Hampshire's forests; (e) provides valuable support to the timber industry; and (f) is a contributor of jobs and to the economy of both the North Country and the state as a whole.

340:2 Public Utilities Commission; Proceedings; Authority to Amend Prior Orders. Notwithstanding any other provision of the law to the contrary, the public utilities commission shall reopen its Docket DE 10-195 and forthwith revise its Order No. 25,213 and its Order No. 26,198 and Order No. 26,333 in

the following manner:

I. Further Suspension of Operation of Cap. The public utilities commission shall amend its Order No. 25,213 and its Order No. 26,198 and Order No. 26,333 issued in Docket DE 10-195 to extend the suspension of the operation of the cap on the cumulative reduction factor as set forth on page 97 of Order No. 25,213 for an additional period of one year from the date the operation of the cap would have otherwise taken effect under Order No. 25,213 and Order No. 26,198 and Order No. 26,333.

II. The Burgess BioPower plant and its affiliates shall, upon request therefor, make its and their capital and operating cost and profit and loss records available to the department of energy for investigation and audit, any of which records may be exempt from public disclosure under RSA 91-A:5, IV if reasonably so designated by the plant. All such records shall also be made available to the Office of the Consumer Advocate. The department of energy shall conduct an investigation and audit of the plant's costs and revenues and submit a report thereon to the house science, technology, and energy committee and to the senate energy and natural resources committee on or before December 31, 2022.

2 Effective Date. This act shall take effect upon its passage.

EXHIBIT 3

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 10-195

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

Consideration of Effects of SB 577 on Order No. 25,213

Order Amending Order No. 25,213

ORDER NO. 26,198

December 5, 2018

APPEARANCES: Robert Bersak, Esq., on behalf of Public Service Company of New Hampshire d/b/a Eversource Energy; Foley Hoag LLP by Carol J. Holahan, Esq., on behalf of Berlin Station, LLC; Donahue, Tucker & Ciandella, PLLC, by Christopher L. Boldt, Esq., on behalf of the City of Berlin; Consumer Advocate D. Maurice Kreis, Esq., on behalf of residential ratepayers; and Suzanne G. Amidon, Esq., on behalf of Commission Staff.

As directed by a state law enacted earlier this year, the Commission hereby amends page 97 of Order No. 25,213 (April 19, 2011), which granted conditional approval to a purchase power agreement between Eversource and Berlin Station, LLC. The amended page is attached to this order.

I. PROCEDURAL HISTORY

On June 28, 2018, Governor Sununu signed into law Senate Bill 577 titled, "AN ACT requiring the public utilities commission to revise its order affecting the Burgess BioPower plant in Berlin, prohibiting the import of certain liquid fuels, and relative to the production of useful thermal energy." Laws of 2018, ch. 340 (SB 577). In Section 1 of SB 577, the New Hampshire legislature found that the "continued operation of the Burgess BioPower plant in Berlin is important to the energy infrastructure of the state of New Hampshire and important for the attainment of renewable energy portfolio standard goals of fuel diversity, capacity, and

sustainability.” Section 2 directs the Commission to “amend its Order No. 25,213 (Docket No. DE 10-195) to suspend the operation of the cap on the cumulative reduction factor as set forth on page 97 of its Order for a period of 3 years from the date the operation of the cap would have otherwise taken effect.”

The Commission issued an order of notice on August 2, 2018, scheduling a prehearing conference on September 5, 2018. At the prehearing conference, Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource); the City of Berlin; Berlin Station, LLC (Berlin Station); and the Office of the Consumer Advocate (OCA) appeared and discussed the issues raised by SB 577.

The OCA filed a Motion for Determinations as a Matter of Law on September 18, 2018. Berlin Station filed a timely objection, and Eversource and the City of Berlin filed memoranda stating their positions.

II. POSITIONS

A. Eversource and Berlin Station Request to Implement SB 577

Eversource stated that, to carry out the legislative intent of SB 577, Eversource and Berlin Station must bilaterally negotiate amendments to the existing power purchase agreement (PPA). Eversource said it is willing to enter into such negotiations subject to two conditions: (1) receipt of an amended Order No. 25,213 that provides the legal basis for such discussions; and (2) assurance from the Commission that Eversource will in fact be entitled to recover any additional costs resulting from an extension of the contract.

Berlin Station and the City of Berlin agreed that the Commission should issue the order directed by the legislature. Berlin Station agreed with Eversource that any additional costs should be recovered from ratepayers. The City took no position on cost recovery.

B. OCA's Motion

After the prehearing conference, the OCA filed a motion asking the Commission to resolve a number of legal issues associated with the passage of SB 577. The parties had discussed those issues and the filing of such a motion at the prehearing conference and technical session.

The OCA did not dispute that the purpose of SB 577 was to lift, for a three-year period, certain limitations on the right of the plant owner to receive payment from Eversource for costs in excess of the prevailing prices of energy, capacity, and renewable energy certificates (RECs) in applicable markets. The OCA insisted, however, that the Commission must address two issues: (1) the extent to which the over-market costs are recoverable from Eversource customers on a non-bypassable basis, and (2) whether the Commission should obtain the "cost and profitability records" which SB 577 explicitly authorizes the Commission to receive in connection with the current proceeding. OCA Motion at 2; *see* Ch. 340:2, II.

The OCA noted that while SB 577 requires Eversource to continue to pay over-market prices beyond the terms of the PPA approved by the Commission in Order No. 25,213, the law does not say how this should be accomplished. Up until divestiture, Eversource recovered the over-market costs from customers in Eversource's energy service rate. In Order No. 25,213, the Commission characterized the cumulative reduction factor (CRF) as providing Eversource's energy service customers an opportunity to recapture the over-market payments, if any, made during the term of the PPA in the event Eversource exercised its option under the PPA to purchase Berlin Station at the end of the term of the PPA. The Commission concluded that without the CRF, the costs of the PPA to Eversource's energy service customers outweighed the environmental and economic benefits of the PPA. *See* Motion at 3. The CRF was capped at

\$100 million in over-market costs, and once that amount was reached, any over-market payments made in a subsequent year would be returned to energy service customers in the immediately following year. *See id.* at 4.

The OCA pointed out that the 2015 Restructuring and Rate Stabilization Agreement (2015 Restructuring Agreement)¹ approved by the Commission changed cost-recovery related to PPAs previously approved by the Commission between suppliers and Eversource, including the Berlin Station PPA. The 2015 Restructuring Agreement provided that Eversource's commitments to purchase power from Berlin Station and the Lempster Wind Farm would continue, provided that the difference between the contract price and the market revenues associated with the PPAs' energy, capacity, and RECs would be recovered through the stranded cost recovery charge (SCRC) that was created in connection with divestiture of generation sources. *See id.* at 5.

The OCA said that at the time it signed the 2015 Restructuring Agreement, the maximum extent to which residential customers could be subject to over-market costs associated with purchases of energy, capacity, and RECs from Berlin Station was a specific known quantity, as a result of the Commission-imposed cap on the CRF. The OCA argued that, to the extent SB 577 removes the limit on cost recovery, the law is a material change to the terms of the 2015 Restructuring Agreement. *Id.* at 6.

The OCA noted that in the context of civil proceedings, the New Hampshire Supreme Court has held that settlement agreements are contractual in nature, and governed by contract law. *Id.* (citations omitted). The OCA claimed that Eversource ratepayers are entitled to the benefit of the bargain represented by the 2015 Restructuring Agreement; and that the imposition

¹ The 2015 Restructuring Agreement is a multi-party settlement of issues related to Eversource's divestiture of its generation assets in Docket No. DE 14-238 and the resolution of cost recovery of the gas flue desulphurization unit installed at Merrimack Station in Docket No. DE 11-250.

of any additional costs resulting from SB 577 impairs the contractual rights of ratepayers, and is a violation of the Contract Clause of the United States Constitution and the retrospective laws provision of the New Hampshire Constitution. *Id.* at 6-7; *see* U.S. CONST., art. I, § 10, cl. 1; N.H. CONST., pt. I, art. 23.

Having concluded that the terms of the 2015 Restructuring Agreement are contractual in nature for purposes of constitutional analysis, the OCA noted that SB 577 is silent as to whether Eversource ratepayers should be subject to additional stranded costs beyond those expressly agreed to in the 2015 Restructuring Agreement. While the fiscal note to the Senate-passed version of SB 577 assumed that Eversource customers would pay the additional costs imposed by the bill, the Senate-passed version of the bill directed the Commission to open a proceeding and consider if it is in the public interest to amend Order No. 25,213. The final version of SB 577 was different. As explained above, the final version only directs the Commission to amend Order No. 25,213 in a specific manner, without separately considering the public interest. *See* Motion at 8-9.

Assuming that the bill has a retroactive effect on the 2015 Restructuring Agreement by adding an unknown quantity of additional costs to be borne by Eversource ratepayers, the OCA concluded that SB 577 impairs the bargain struck by the OCA in signing the 2015 Restructuring Agreement, and is arguably unconstitutional. *See* Motion. at 9-11. In making this argument, the OCA recognized that if the impairment to the contract had a “significant and legitimate public purpose,” the change could clear the constitutional threshold. *See id.* at 10. With respect to SB 577, according to the OCA, no such public purpose exists, because the excess money required by the law inures to the benefit of Berlin Station’s owners and the surrounding community at the expense of ratepayers. *Id.*

The OCA argued that the Commission should take one of three courses of action. First, the Commission could conclude that Eversource, not its ratepayers, should be financially responsible for the costs of suspending the effect of the CRF approved in Order 25,213. Second, the Commission could declare that SB 577 is unconstitutional under the federal and state constitutions. Third, if the Commission chose not to undertake either of those options, it should transfer the question of the constitutionality of SB 577 to the New Hampshire Supreme Court. Motion at 11.

Pointing to specific language in paragraph II of section 2 of SB 577, the OCA also argued that the Commission should obtain the cost and profitability records of Berlin Station. According to the OCA, SB 577 authorizes any party to the proceeding referenced in the paragraph to tender such request. The OCA has requested the records and has noted that, pursuant to RSA 363:28, VI, the OCA is automatically entitled to a copy of confidential information filed with the Commission in an adjudicative proceeding in which the OCA is a participating party. The OCA said that removing the limit of the CRF triggers a need for the counterparties to renegotiate the PPA and submit the results to the Commission for approval. That approval, according to the OCA, will require a determination that the amended agreement is in the public interest, as well as findings related to efficiency and cost effectiveness pursuant to RSA 362-F:9. The OCA said that Berlin Station's financial records will assist in making such findings. Motion at 12-13.

1. Eversource

According to Eversource, the OCA Motion impacts recovery of the additional costs imposed by SB 577. Although the expectation of the legislature appears to be that the additional costs will be recovered through Eversource's existing stranded cost adjustment charge as

contained in the 2015 Restructuring Agreement, Eversource asserted that the Commission has authority to create a new, non-bypassable charge if inclusion in the present SCRC is problematic. Eversource took no position on the OCA's demand for access to the books and records of Berlin Station.

2. Berlin Station

Berlin Station first argued that SB 577 does not violate the Contract Clause of the federal or state constitution. According to Berlin Station, although the Contract Clause purports to bar state laws that substantially impair contractual rights, such laws will be upheld if they serve a significant and legitimate public purpose and are necessary and reasonable in the judgment of the legislature. Objection at 2 (citing *Deere & Co. v. State*, 168 N.H. 460, 472 (2015)). Berlin Station claimed that, in passing SB 577, the legislature recognized the significant and legitimate public purpose of the continued operation of the Burgess BioPower plant in Berlin. Objection at 2-3.

Berlin Station also argued that SB 577 has no retroactive effect on the PPA or on the 2015 Restructuring Agreement and is plainly prospective. Objection at 4. Berlin Station noted that SB 577 directs the Commission to reopen the proceeding, and argued that the legislature's policy choice in enacting SB 577 is unrelated to the 2015 Restructuring Agreement. According to Berlin Station, the overriding argument in support of the constitutionality of SB 577 is the public interest finding of the legislature in favor of the supporting energy infrastructure and the goals of fuel diversity, capacity, and sustainability. Objection at 4-5. Berlin Station refuted the OCA's claim that the benefits from SB 577 were unconstitutionally "targeted," saying that claim had no legal support. Berlin Station also argued that certification to the New Hampshire Supreme Court is unnecessary and unwarranted. Objection at 8-9.

Berlin Station said that while cost recovery is not discussed in the legislation, it was referenced in the fiscal note worksheet prepared by the Commission for the Legislative Budget Assistant. The fiscal note resulting from the worksheet stated that suspension of the cap on the CRF would increase costs to customers. Berlin Station said that it is irrelevant whether the costs are recovered through Eversource's stranded cost recovery charge, or some other non-bypassable charge. According to Berlin Station, the legislature intended for ratepayers to bear the cost of suspending the CRF cap, and left it to the Commission to establish an appropriate mechanism.

Finally, Berlin Station claimed that its confidential cost and profitability records are not relevant to this proceeding, and that the Commission should not require their production. According to Berlin Station, the legislature authorized only the Commission, at its discretion, to request such records; and the records will shed no light on the action that the legislation requires the Commission to take. Furthermore, the records are irrelevant because, as Berlin Station views it, the law requires Berlin Station and Eversource to negotiate a change to the PPA, and does not require consideration of the profitability of the facility.

3. City of Berlin

The City agreed with and joined in the arguments and authorities cited by Berlin Station. The City, however, took no position on whether the production of financial records by Berlin Station would be relevant to the issues currently before the Commission.

III. COMMISSION ANALYSIS

We hereby issue the change to Order No. 25,213 mandated by SB 577 and contained in the ordering clause below. The amended page 97 is attached to this order. While we agree with the OCA that there are potential constitutional issues raised by SB 577, we are not in a position to resolve them at this time. We also find that we do not have a sufficient record upon which to

certify a question to the New Hampshire Supreme Court. In this matter, it will be better for the parties and for the Court to have the full context, including any revised agreement from the parties, if the Court is asked to review this matter.

Eversource periodically informs the Commission of the balance in the CRF account. The balance has not yet reached \$100 million, and therefore the over-market costs associated with the PPA between Eversource and Berlin Station have not yet reached the contractual cap. We need not consider any cost recovery mechanism for over-market costs in excess of \$100 million unless and until we are presented with a PPA that will produce such costs.

Should Eversource and Berlin Station negotiate a revised PPA in response to the change contained in this order, they should file that revised PPA in this docket for our review and consideration. The filing should include testimony or a technical statement that identifies all changes to the PPA.

We appreciate the OCA's desire to access Berlin Station's books and records to determine whether an amended agreement is in the public interest. We also appreciate Berlin Station's claim that its confidential cost and profitability records may not be relevant given the legislature's public interest finding. We will reserve a decision on the production of those records until we are asked to review a revised PPA.


Based upon the foregoing, it is hereby

ORDERED, that Order No. 25,213 is amended by adding in the second paragraph on page 97: "*Amendment made December 5, 2018, as required by Laws of 2018, ch. 340: Operation of the cap shall be suspended for three years from the date on which the cumulative amount reaches \$100 million.*"

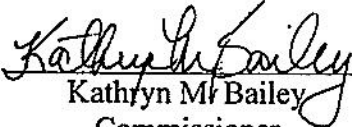
DE 10-195

- 10 -

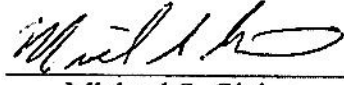
By order of the Public Utilities Commission of New Hampshire this fifth day of
December, 2018.



Martin P. Honigberg
Chairman

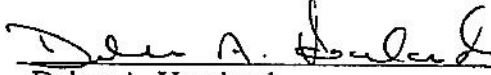


Kathryn M. Bailey
Commissioner



Michael S. Giaimo
Commissioner

Attested by:



Debra A. Howland
Executive Director

6. Cumulative Reduction Factor

As discussed above, the CRF is a step in the right direction in terms of mitigating risk to customers and seeking to avoid the situation that occurred with rate orders approved by the Commission in the 1980s, which resulted in PSNH customers paying rates over two decades that were more than \$1 billion over market prices, but the protection is too limited and too remote as proposed. In addition to the conditions relative to energy, capacity and REC prices, and limitations on the quantity of energy and RECs that PSNH is required to purchase, we find it necessary to impose an additional condition, one that reasonably assures that PSNH's customers will receive, through the CRF under Article 6.1.3 of the PPA, the value of the facility anticipated through PSNH's purchase option under Article 7 of the PPA.

As discussed during the hearings, the level of CRF at the end of year 20 could be greater than the fair market value of the facility at that time, in which case PSNH customers would not be fully "compensated" under PSNH's approach for the over-market payments over the term of the agreement. To better protect the interests of customers, we will cap the level of the CRF on a cumulative annual basis at \$100 million, a level that reasonably compares to testimony in the record as to the potential future value of the facility.⁴⁷ *Amendment made December 5, 2018, as required by Laws of 2018, ch. 340: Operation of the cap shall be suspended for three years from the date on which the cumulative amount reaches \$100 million.* To the extent that the accumulated account exceeds \$100 million in any year, the overage will be credited against the energy price paid in the following year. This mechanism has the salutary impact of reducing risk to customers over time in the event PPA prices are well above market prices by effectively matching the level of the CRF to a prospective value of the facility. Further, through this mechanism customers would see the benefit of mid-course or late-course downward adjustments in the energy price if it turns out that the PPA is significantly over-market.

⁴⁷ At hearing a range of future values of the Facility was discussed, from the possibility of no value, *see* 1/24/11 AM Tr. at 82-83, to \$120-\$135 million depending on the capacity rating assumed, *see* 2/1/11 Tr. at 21-22.



Bill Text: NH SB577 | 2018 | Regular Session | Amended New Hampshire Senate Bill 577 (***Prior Session Legislation***)

Bill Title: Requiring the public utilities commission to revise its order affecting the Burgess BioPower plant in Berlin, prohibiting the import of certain liquid fuels, and relative to the production of useful thermal energy.

Spectrum: Slight Partisan Bill (Republican 5-2)

Status: (*Passed*) 2018-06-29 - III. Remainder Effective 07/01/2018 [SB577 Detail]

Download: [New_Hampshire-2018-SB577-Amended.html](#)

SB 577 - AS AMENDED BY THE HOUSE

03/08/2018 0721s
03/08/2018 0884s
3May2018... 1677h

2018 SESSION

18-2889
10/06

SENATE BILL **577**

AN ACT requiring the public utilities commission to revise its order affecting the Burgess BioPower plant in Berlin, prohibiting the import of certain liquid fuels, and relative to the production of useful thermal energy.

SPONSORS: Sen. Bradley, Dist 3; Sen. Woodburn, Dist 1; Sen. Giuda, Dist 2; Sen. Avard, Dist 12; Rep. Theberge, Coos 3; Rep. Y. Thomas, Coos 3; Rep. Chandler, Carr. 1

COMMITTEE: Energy and Natural Resources

AMENDED ANALYSIS

This bill:

- I. Requires the public utilities commission to reopen a proceeding to revise to its order affecting the Burgess BioPower plant in Berlin.
- II. Prohibits the import of certain liquid fuels and prohibits the sale of such fuels in 2019.
- III. Changes the inclusion in electric renewable energy class I for methane gas.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears ~~in brackets and struckthrough~~.
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.
03/08/2018 0721s
03/08/2018 0884s
3May2018... 1677h 18-2889
10/06

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eighteen

AN ACT requiring the public utilities commission to revise its order affecting the Burgess BioPower plant in Berlin, prohibiting the import of certain liquid fuels, and relative to the production of useful thermal energy.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Findings. The general court finds that the continued operation of the Burgess BioPower plant in Berlin is important to the energy infrastructure of the state of New Hampshire and important for the attainment of renewable energy portfolio standard goals of fuel diversity, capacity, and sustainability.

2 Public Utilities Commission; Proceedings; Authority to Amend Order. Notwithstanding any other provision of the law to the contrary, the public utilities commission shall reopen its Docket DE 10-195 and forthwith revise its Order No. 25,213 in the following manner:

I. Suspension of Operation of Cap. The public utilities commission shall amend its Order No. 25,213 (Docket DE 10-195) to suspend the operation of the cap on the cumulative reduction factor as set forth on page 97 of its Order for a period of 3 years from the date the operation of the cap would have otherwise taken effect.

II. During the proceedings the Burgess BioPower plant shall, upon request, make their cost and profitability records available to the public utilities commission, which records shall be exempt from public disclosure under RSA 91-A:5, IV.

3 Sulphur Limits; Import Prohibited. Amend RSA 125-C:10-d to read as follows:

125-C:10-d Sulfur Limits of Certain Liquid Fuels.

I. No person shall import into the state any of the following liquid fuels:

(a) No. 2 oil, also referred to as distillate oil, with a sulfur content greater than 0.0015 percent by weight;

(b) No. 4 oil with a sulfur content greater than 0.25 percent by weight; or

(c) Nos. 5 or 6 oil, also referred to as residual oil, with a sulfur content greater than 0.5 percent by weight.

II. Beginning on February 1, 2019 and continuing thereafter, no person shall sell, offer for sale, supply, distribute for sale or use, except for fuel remaining in storage for a device not requiring a permit pursuant to RSA 125-C:11, any of the following liquid fuels:

(a) No. 2 oil, also referred to as distillate oil, with a sulfur content greater than 0.0015 percent by weight;

(b) No. 4 oil with a sulfur content greater than 0.25 percent by weight; or

(c) Nos. 5 or 6 oil, also referred to as residual oil, with a sulfur content greater than 0.5 percent by weight.

[H] III. The commissioner may temporarily allow the use of non-conforming fuels with respect to paragraph [H] II if there is a demonstrated need to do so based on an acute shortage of supply.

4 Electric Renewable Energy Classes; Useful Thermal Energy. Amend RSA 362-F:4, I(e) to read as follows:

(e) Methane gas if the methane gas energy output is in the form of useful thermal energy provided that the unit began operation after January 1, 2013.

5 Effective Date.

I. Section 3 of this act shall take effect 12:01 a.m. July 1, 2018.

II. Section 4 of this act shall take effect 60 days after its passage.

III. The remainder of this act shall take effect July 1, 2018.

LBAO
18-2889
Amended 4/6/18

SB 577- FISCAL NOTE

AS AMENDED BY THE SENATE (AMENDMENTS #2018-0721s and #2018-0884s)

AN ACT requiring the public utilities commission to consider its order affecting the Burgess BioPower plant in Berlin, prohibiting the import of certain liquid fuels, and relative to the production of useful thermal energy.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2019	FY 2020	FY 2021	FY 2022
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	Indeterminable	Indeterminable	Indeterminable	Indeterminable
Funding Source:	<input checked="" type="checkbox"/> General Various Governmental Funds	<input type="checkbox"/> Education	<input checked="" type="checkbox"/> Highway	<input checked="" type="checkbox"/> Other -

COUNTY:

Revenue	\$0	\$0	\$0	\$0
Expenditures	Indeterminable	Indeterminable	Indeterminable	Indeterminable

LOCAL:

Revenue	\$0	\$0	\$0	\$0
Expenditures	Indeterminable	Indeterminable	Indeterminable	Indeterminable

METHODOLOGY:

The Public Utilities Commission (PUC) indicates sections 1 and 2 of the bill concerning the Burgess BioPower plant (Burgess) instruct the PUC to consider whether to raise the level of the cumulative reduction factor in the contract between Eversource and Burgess. If the cumulative reduction factor were higher it would allow Burgess to continue to charge Eversource for its output which would increase Eversource's costs related to the contract. Because the costs of the Burgess contract are paid by Eversource customers, if such an increase occurred it would increase costs to customers above the \$100 million cap on the energy component of the current contract. To the extent that the state, county and local governments are Eversource ratepayers, increasing the cumulative reduction fund would increase their electricity bills as all over-market costs associated with the contract are recovered through the stranded cost reduction charge. Because it is not possible to know the outcome of a future PUC docket, such increases are speculative and therefore the impact on costs is indeterminable. If the PUC were to raise the cumulative reduction factor, it could potentially allow the Burgess plant to operate longer than under the current contract. Increased operation would likely increase plant value and potentially increase local tax revenues. Because such an increase in tax revenues is speculative, the effect on local revenues is indeterminable.

The PUC states section 4 of the bill clarifies that certain methane gas energy output may qualify as useful thermal energy and be eligible for renewable energy certificates under RSA 362-F. Eligible facilities using methane gas to produce useful thermal energy would create Class I Thermal renewable energy certificates (RECs), thereby increasing the supply of Class I Thermal renewable energy certificates. That increase in Class I Thermal REC supply would help New Hampshire meet its renewable portfolio standard goals and could put downward pressure on Class I Thermal REC prices. REC prices are included in electricity rates, and therefore impact the costs to state, county and local governmental units, to the extent they are electricity consumers. The amount of these cost impacts are indeterminable.

The Department of Environmental Services indicates section 3 of the bill prohibits the import of certain liquid fuels and prohibits the sale of such fuels in 2019. It is the Department's understanding, based on information from fuel suppliers, there would be no significant price differential once low sulfur fuel was implemented throughout the northeast region, which will happen in July 2018.

AGENCIES CONTACTED:

Public Utilities Commission and Department of Environmental Services

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 19-142

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

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

Amended Order Approving an Amendment to the Power Purchase Agreement

ORDER NO. 26,333

February 18, 2020

APPEARANCES: Jessica Chiavara, Esq., on behalf of Public Service Company of New Hampshire d/b/a Eversource Energy; Carol Holahan, Esq., on behalf of Berlin Station; Christopher Boldt, Esq., on behalf of the City of Berlin; the Office of the Consumer Advocate by D. Maurice Kreis, Esq., on behalf of residential ratepayers; and F. Anne Ross, Esq., and Brian D. Buckley, Esq., on behalf of Commission Staff.

In this order, we approve an amended power purchase agreement between Eversource and Berlin Station and a settlement agreement, which implement the directives established by the Legislature in 2018 N.H. Laws, chapter 340. The approvals allow Eversource to recover from ratepayers the over-market costs of energy purchased from Berlin Station for three years. This order amends Order No. 26,331 issued on January 31, 2020, by deleting footnote number eight.

I. PROCEDURAL HISTORY

On December 5, 2018, the Commission issued Order No. 26,198 (Order) amending its earlier Order No. 25,213 (April 18, 2011) (Original Order). The Original Order approved with conditions a power purchase agreement (PPA) between Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource or the Company) and Laidlaw Berlin

DE 19-142

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BioPower, LLC, now Berlin Station, LLC (Berlin Station).¹ The PPA requires Eversource to purchase electric power, including energy, capacity, and the associated renewable energy certificates, at agreed prices for a 20-year term.

If the energy prices in the PPA are higher than market prices, the calculation becomes a cumulative reduction on the purchase price of the facility, known as the cumulative reduction factor (CRF). PPA at 11. Pursuant to the Original Order, a \$100 million cap was imposed on the CRF such that, in the event the accumulated CRF exceeds \$100 million at the end of any operating year, the overage paid above the cap would be credited against contract payments made to Berlin Station for electric power in the following year and customers' resulting energy service rates would be reduced. Order No. 25,213 at 97.

On June 28, 2018, Governor Sununu signed into law Senate Bill 577, 2018 N.H. Laws, ch. 340 (SB 577). In SB 577, the New Hampshire Legislature found that the "continued operation of the Burgess BioPower plant in Berlin is important to the energy infrastructure of the state ... and important for the attainment of renewable energy portfolio standard goals of fuel diversity, capacity, and sustainability." *Id.* Additionally, Section 2 of SB 577 directed the Commission to amend Order No. 25,213, "to suspend the operation of the cap on the cumulative reduction factor as set forth on page 97 of its Order for a period of 3 years from the date the operation of the cap would have otherwise taken effect." 2018 N.H. Laws, ch. 340:2.

As directed by statute, the Commission amended the Original Order to suspend the operation of the cap for three years from the date on which the cumulative amount reaches \$100 million. Order No. 26,198 at 9. On August 30, 2019, the Commission issued an order of

¹ Following issuance of the Original Order approving the PPA, ownership of the BioPower plant in Berlin was transferred from Laidlaw Berlin BioPower, LLC, to a newly created entity, Berlin Station, LLC. The plant is operated by Burgess BioPower.

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notice opening this docket to consider “whether, and if so under what rate recovery mechanism, Eversource may recover from ratepayers the over-market costs of electric energy purchased under the PPA with Berlin Station in excess of the \$100 million cap while operation of the cap is suspended.” Order of Notice at 2-3. The CRF amount reached \$100 million in September 2019.

On November 19, 2019, Eversource filed an amendment to the PPA (Amended PPA) with Berlin Station, together with a motion requesting that the Commission approve the Amended PPA accompanied by testimony from Frederick B. White. On November 26, the Office of Consumer Advocate (OCA) filed an opposition to the motion, and on December 5, Berlin Station filed a motion to strike portions of the OCA opposition. On December 12, the Commission issued a supplemental order of notice concerning the proposed Amended PPA. The City of Berlin petitioned to intervene on December 30.

On December 31, 2019, Eversource, Berlin Station, the OCA and Commission Staff jointly filed a settlement agreement (Settlement Agreement) requesting expedited approval of the Amended PPA so that Stranded Cost Rates could be adjusted with other reconciling adjustments effective February 1, 2020. A prehearing conference was held on January 9, 2020, and on January 14, Eversource filed responses to two record requests concerning customer impacts of the Amended PPA with the Commission. Eversource filed supplemental responses to the two record requests on January 17, and corrected supplemental responses on January 24.

A hearing was held before the Commission on January 29, 2020. The settling parties presented a panel of witnesses in support of the Settlement.² The Settlement Agreement and

² The panel of witnesses included: Robert Desrosiers and Dammon Frecker representing Berlin Station; Erica Menard and Frederick White representing Eversource; Dr. Pradip Chattopadhyay representing the OCA; and Thomas Frantz representing Commission Staff.

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related docket filings, other than information for which confidential treatment is requested of or granted by the Commission, are posted at <https://puc.nh.gov/Regulatory/Docketbk/2019/19-142.html>.

II. SETTLEMENT AGREEMENT

The Settlement Agreement requests that the Commission approve the Amended PPA³ and allow Eversource to recover the over-market costs of the Amended PPA through its non-bypassable stranded cost recovery charge (SCRC) on a uniform cents per kilowatt-hour (kWh) basis.⁴ Pursuant to the terms of the Amended PPA, after the end of the three-year period starting on December 1, 2019, and ending on November 30, 2022, the amount by which the CRF account is in excess of \$100 million (the Excess Cumulative Reduction Amount) will be credited against amounts otherwise due for energy delivered to PSNH during the subsequent operating year (December 1, 2022, through November 30, 2023) until such Excess Cumulative Reduction Amount is eliminated.

According to the Settlement Agreement, the impact on customer rates of this Amended PPA is estimated to be an increase of approximately \$20 to \$25 million per year during the three-year suspension period. The rate impact will vary and is dependent upon operations of Berlin Station and the market prices for energy. The Excess Cumulative Reduction Amount will

³ While Order No. 26,198 suspended operation of the cap, the cap in the PPA remains in effect. In order to effectuate the suspension, the Amended PPA must be approved by the Commission. Further, the Amended PPA is contingent on an order from the Commission approving recovery by Eversource of over-market costs from customers through a non-bypassable rate mechanism. Amended PPA at 3.

⁴ Pursuant to the 2015 Restructuring Agreement, approved in Order No. 25,920, Part 2 stranded costs recovered through the SCRC are allocated among rate classes at specified percentages. Under the Settlement Agreement, the SCRC allocation for the over-market costs above the \$100 million CRF cap will be applied on an equal cents per kilowatt-hour basis.

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then be credited to ratepayers during the operating year following the three-year suspension (December 1, 2022, through November 30, 2023).

The settling parties included a motion for expedited decision with the Settlement Agreement in order to allow the combination of any rate adjustment resulting from the Amended PPA with other rate adjustments established in Docket No. DE 19-108 for effect on February 1, 2020.

III. COMMISSION ANALYSIS

Even when the parties to a contested case have entered into a settlement agreement, we must “independently review the settlement to ensure that the result comports with applicable standards.” *Public Service Company of New Hampshire d/b/a Eversource Energy*, Order No. 25,920 at 64 (July 1, 2016); *see* N.H. Admin. R., Puc 203.20(b) (“The commission shall approve a disposition of any contested case by stipulation [or] settlement ... if it determines that the result is just and reasonable and serves the public interest”). The Settlement Agreement in this docket represents the settling parties’ “accord to implement” the Legislature’s mandate in SB 577 that the Commission “suspend the operation of the cap on the cumulative reduction factor ... for a period of 3 years from the date the operation of the cap would have otherwise taken effect.” Settlement Agreement at 1; 2018 N.H. Laws, ch. 340:2. Accordingly, we review the Settlement Agreement for conformity with the directives in SB 577, and to ensure that it satisfies the requirement of RSA 374:57 that the Amended PPA is not unreasonable or against the public interest.

Through SB 577, the Legislature plainly required suspension of the cap on the CRF for three years. In light of the stated importance of “the continued operation” of Berlin Station “to the energy infrastructure of the state” and “the attainment of renewable energy portfolio standard

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goals of fuel diversity, capacity, and sustainability,” 2018 N.H. Laws, ch. 340:1, it is clear that the purpose of suspending the CRF cap was to avoid the potential shutdown of Berlin Station and ensure “extra time” for Berlin Station and the Legislature “to secure a more permanent solution to protect our energy infrastructure.” Committee Report on SB 577, House Science, Technology, and Energy Committee, May 2, 2018. Furthermore, it is clear that the Legislature was cognizant of the fact that suspension of the CRF cap would have a direct cost to ratepayers. Both the fiscal note to SB 577 and the legislative history demonstrate an understanding that Eversource ratepayers would bear the cost of suspending the CRF cap at least during the three-year suspension period. SB 577 (2018) Fiscal Note; Public Hearing on SB 577, House Science, Technology, and Energy Committee (April 11, 2018) (testimony regarding the cost of SB 577 to ratepayers).

The costs are significant. In response to a record request by the Commission, Eversource indicated that the over-market energy costs under the PPA for the current operating year (December 1, 2019 through November 30, 2020) are forecast to be \$25.688 million.⁵ Projected over the three-year suspension period, Eversource estimates its customers will pay a total of \$82.3 million in over-market costs (the Excess Cumulative Reduction Amount). When applied on an equal cents per kilowatt-hour basis across all rate classes, as proposed by the Settlement Agreement, those over-market costs translate to an estimated average rate increase of

⁵ To align recovery with the February 1 adjustment of the stranded cost recovery charge, Eversource proposed recovery of the known and forecasted over-market costs between September 2019 and January 30, 2021, beginning February 1, 2020. During operating year December 1, 2018, through November 30, 2019, cumulative over-market payments to Berlin Station exceeded the \$100 million CRF cap by \$5.267 million. That additional cost combined with the forecasted over-market costs from December 1, 2019, through January 30, 2021, is estimated to be \$33.576 million, which will be recovered from Eversource ratepayers between February 1, 2020, and January 31, 2021. Exhibit 3.

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0.356 ¢/kWh over the three-year suspension period.⁶ Accordingly, an average residential ratepayer (600 kWh/month) would see an estimated monthly bill impact of \$2.13 for a total cost of \$77 over the three-year suspension period. Similarly, a representative small commercial customer (750 kWh/month) would experience an estimated average monthly bill impact of \$2.67 for a total cost of \$96 over the three-year suspension period. A large commercial customer (using 100,000 kWh/month) would experience an estimated average monthly bill impact of \$355.66 for a total cost of \$12,804 over the three-year suspension period, and an industrial customer (using 1,000,000 kWh/month) would experience an estimated average monthly bill impact of \$3,556.58 for a total cost of \$128,037 over the three-year suspension period.

Pursuant to the terms of the Settlement Agreement and the Amended PPA, at the conclusion of the operating year in which the three-year suspension period ends, Berlin Station will be obligated to repay the approximately \$82 million Excess Cumulative Reduction Amount to Eversource in the form of a credit against energy payments in each of the 12-monthly payments in the 2022-23 operating year (December 1, 2022, through November 30, 2023).⁷ Accordingly, the Amended PPA and the Settlement Agreement effectuate a deferral, rather than a waiver, of repayment of the Excess Cumulative Reduction Amount, and purport to retain the

⁶ Due to the inclusion of approximately 17 months of over-market costs in the SCRC for recovery during the 12-month period beginning February 1, 2020, the rate impact for the first year of the suspension period will be 0.4351¢/kWh on an equal cents per kilowatt-hour basis across all rate classes. The rate impact in years 2 and 3 of the suspension period will each reflect only 12 months of over-market costs in excess of the CRF cap.

⁷ Pursuant to Order No. 26,198, operation of the CRF cap was suspended “for three years from the date on which the cumulative amount reaches \$100 million.” Order No. 26,198 at 9. The CRF reached \$100 million in September 2019. Accordingly, the three-year suspension period will run from September 2019 through September 2022. Although suspension of the cap will end in September 2022, under the terms of the PPA and the Settlement Agreement, the accrual of over-market costs will continue through November 30, 2022.

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original bargain of ratepayers paying no more than \$100 million in over-market energy costs during the 20-year term of the PPA.⁸

Viewed as a deferral, and in consideration of the Legislature's mandate to suspend the CRF cap and express finding that the "continued operation" of Berlin Station is "important to ... energy infrastructure ... and for the attainment of renewable energy portfolio standard goals of fuel diversity, capacity, and sustainability," we find that the Settlement Agreement is reasonable and in the public interest. Indeed, disapproval of the Amended PPA would directly frustrate the express intent of the Legislature as set forth in SB 577.

We further find that cost recovery by Eversource of the over-market costs during the three-year suspension period through a non-bypassable equal cents per kilowatt-hour charge is reasonable and in the public interest. We agree with the testimony of Assistant Consumer Advocate Pradip Chattopadhyay and Electric Division Director Thomas Frantz that the proposed equal cents per kilowatt-hour allocation of the over-market costs is consistent with a traditional rate design based on customer load.

There is a risk that Berlin Station will be unable to repay the approximately \$82 million Excess Cumulative Reduction Amount in 2023.⁹ Indeed, it was the potential that Berlin Station "would be forced to shut down sometime in 2020" if the CRF cap was not suspended that prompted passage of SB 577 in the first place. Committee Report on SB 577, House Science, Technology, and Energy Committee, May 2, 2018. In the eventuality that Berlin Station is

⁸ Deleted.

⁹ At the January 29 hearing, it was noted that it will likely be difficult for Berlin Station to repay the entire Excess Cumulative Reduction Amount in one year. An inability by Berlin Station to be able to repay the entire amount in one year may result in the plant closing without any repayment to ratepayers. When questioned by the Commission at hearing, the parties could not agree at this time to extend repayment of the Excess Cumulative Reduction Amount to ratepayers over a longer period of time.

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unable to repay the Excess Cumulative Reduction Amount, the total over-market cost of the PPA for ratepayers would be nearly double the \$100 million originally approved by the Commission in Docket No. DE 10-195. We recognize that one of the goals of SB 577 was to buy “extra time” for Berlin Station and the Legislature to “secure a more permanent solution.” *Id.* Our approval of the Amended PPA and the Settlement Agreement reflects that legislative goal.

In order to keep the Commission and the Legislature informed of the rate of growth of the Excess Cumulative Reduction Amount, and the attendant rate impact to Eversource customers, we direct Eversource to submit to the Commission a bi-annual report providing an accounting of the current Excess Cumulative Reduction Amount, the forecast change in the Excess Cumulative Reduction Amount over the remaining term of the CRF cap suspension, and any resulting projected change in rates. Such reports shall be submitted in conjunction with Eversource’s SCRC filings.

In addition, given the impact of the suspension of the CRF cap on ratepayers and the Legislative purpose to provide time for Berlin Station to develop a permanent solution to its economic viability, as agreed upon by Berlin Station at the January 29 hearing, we direct Berlin Station to provide bi-annual reports to the Commission and the Legislature beginning on November 1, 2020, outlining Berlin Station’s progress toward achieving a permanent solution that will ensure the Excess Cumulative Reduction Amount is repaid. Copies of those reports should be provided to the standing legislative committees with jurisdiction over energy-related issues, specifically the House Science, Technology, and Energy and the Senate Energy and Natural Resources Committees.

Further, pursuant to the authority granted by the Legislature in 2018 N.H. Laws,

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ch. 340:2, we direct Berlin Station to submit annually to the Commission Berlin Station's cost and profitability records, which shall include, but not be limited to, the facility's annual capital costs, operating and maintenance costs, generation output (in megawatt hours), revenues from the sale of renewable energy credits (to Eversource and to other load serving entities), Forward Capacity Market revenues, energy market revenues (including ancillary services), any tax benefits received, the value of the tax benefits, and the start and ending dates for the tax benefits. Annual cost and profitability records shall be submitted to the Commission within 60 days of the close of Berlin Station's fiscal year in each year that the CRF cap is suspended. Such cost and profitability records will be exempt from public disclosure under RSA 91-A:5, IV pursuant to 2018 N.H. Laws, ch. 340:2, II.

Based upon the foregoing, it is hereby

ORDERED, that the Settlement Agreement and the Amended PPA are approved;
and it is

FURTHER ORDERED, that Eversource shall be allowed to recover all costs of the Amended PPA from customers via a non-bypassable charge as set out in Eversource's Revised Tariff Provision effective February 1, 2020, consistent with Eversource's Stranded Cost Recovery Charge filings in Docket No. DE 19-108; and it is

FURTHER ORDERED, that Eversource shall submit a report to the Commission no later than January 15 and July 15 in each year the cumulative reduction factor cap is suspended setting forth an accounting of the current Excess Cumulative Reduction Amount, the forecast change in the Excess Cumulative Reduction Amount over the remaining term of the cumulative reduction factor cap suspension, and any resulting projected change in rates; and it is

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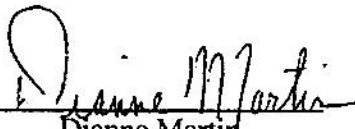
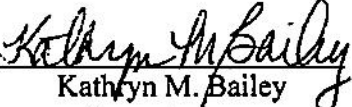
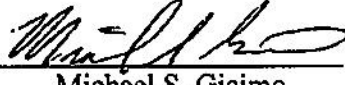
FURTHER ORDERED, that Berlin Station shall submit its cost and profitability records to the Commission annually within 60 days of the close of Berlin Station's fiscal year in each year the cumulative reduction factor cap is suspended; and it is

FURTHER ORDERED, that beginning November 1, 2020, and continuing as long as the cumulative reduction factor cap is suspended, Berlin Station shall submit to the Commission and the Legislature a bi-annual report on Berlin Station's progress toward a permanent solution that allows Berlin Station's continued operation; and it is

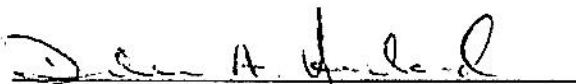
FURTHER ORDERED, that the Eversource shall file a compliance tariff with the Commission on or before February 14, 2020, in accordance with N.H. Admin. R., Puc 1603.02(b); and it is

FURTHER ORDERED, that this proceeding shall be held open to receive the reports and records set forth above.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of February, 2020.

 _____ Dianne Martin Chairman	 _____ Kathryn M. Bailey Commissioner	 _____ Michael S. Giaimo Commissioner
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Attested by:



Debra A. Howland
Executive Director

Docket #: 19-142

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Printed: 2/18/2020

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EXHIBIT 4

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 10-195

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE D/B/A
EVERSOURCE ENERGY**

**Petition for Approval of Power Purchase Agreement with Laidlaw Berlin
BioPower, LLC**

DE 19-142

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE D/B/A
EVERSOURCE ENERGY**

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

**Order *Nisi* Approving Modifications to Orders Nos. 25,213, 26,198, and 26,333
Pursuant to the Terms of SB 271 (2022 N.H. Laws, ch. 275:1)**

O R D E R N O. 26,665

August 11, 2022

In this order, we hereby effectuate the General Court's directive established in SB 271 (2022 N.H. Laws, ch. 275:1), signed by the Governor on June 24, 2022, relating to the terms of our Orders issued in these instant Docket Nos. DE 10-195 (Order No. 25,213 (April 18, 2011) and Order No. 26,198 (December 5, 2018) and DE 19-142 (Order No. 26,333 (February 18, 2020) that govern the terms of the Purchase Power Agreement (PPA) discussed herein.

The PPA in question governs the contractual relationship between Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource or the Company) and the Burgess BioPower Plant located in Berlin, New Hampshire (Burgess). Burgess is a 75-megawatt facility that generates electrical power from burning low-grade wood, with the output sold to Eversource to meet a portion of the

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electrical energy needs of the Company's default service customers. The Commission is responding to the Legislature's directive contained in SB 271; we will therefore refer to the General Court's language in this Order to ensure that we effectuate the Legislature's intent correctly.

Therefore, notwithstanding any other provision of the law to the contrary, we hereby reopen Docket No. DE 10-195, for the purposes of this Order, and forthwith revise our Order No. 25,213 and our Order Nos. 26,198 and 26,333 in the following manner:

The Commission hereby amends our Order No. 25,213 and Orders Nos. 26,198 and 26,333 issued in Docket Nos. DE 10-195 and DE 19-142 to extend the suspension of the operation of the cap on the cumulative reduction factor as set forth on page 97 of Order No. 25,213 for an additional period of one year from the date the operation of the cap would have otherwise taken effect under Order No. 25,213 and Order No. 26,198 and Order No. 26,333 in Docket No. DE 19-142 regarding cost recovery for costs in excess of the cap to apply during the additional period in which the cap is extended. See 2018 N.H. Laws, ch. 340:2, I, *as revised by* 2022 N.H. Laws, ch. 275:1.

Furthermore, as required by 2018 N.H. Laws, ch. 340:2, II and *as revised by* 2022 N.H. Laws, ch. 275:1, we hereby order that the Burgess BioPower plant and its affiliates shall make their capital and operating cost and profit and loss records available to the New Hampshire Department of Energy (DOE) for investigation and audit, any of which records may be exempt from public disclosure under RSA 91-A:5, IV, if reasonably so designated by the Burgess BioPower plant. All such records shall also be made available to the Office of the Consumer Advocate (OCA). 2018 N.H. Laws, ch. 340:2, II, *as revised by* 2022 N.H. Law, ch. 275:1. We further order that these

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materials be filed with the Commission contemporaneously with the filings made to the DOE and the OCA. RSA 374:4.

Finally, we note that SB 271 requires the DOE to conduct an investigation and audit of the Burgess BioPower Plant's costs and revenues and submit a report thereon to the House Science, Technology, and Energy Committee and to the Senate Energy and Natural Resources Committee of the General Court on or before December 31, 2022. *See* 2018 N.H. Laws, ch. 340:2, II, *as revised by* 2022 N.H. Laws, ch. 275:1. We order that copies of this report be filed contemporaneously with the Commission, *see* RSA 374:4, and the OCA, when filed with the Legislature.

It is our expectation that Burgess and Eversource will update their PPA to incorporate these changes and submit these revisions for our review and approval imminently, similar in manner to the proceeding in Docket No. DE 19-142, conducted in response to comparable prior directives from the General Court. *See* Order No. 26,333 (Feb. 18, 2020). We will act expeditiously regarding this future petition, which will be reviewed in a separate, newly created Commission docket.

Based upon the foregoing, it is hereby

ORDERED NISI, that pursuant to the terms of SB 271, the revisions to Orders Nos. 25,213, 26,198, and 26,333, are MADE to take effect as of September 12, 2022, as delineated above; and it is

FURTHER ORDERED, that the Burgess BioPower Plant and its affiliates shall make available its and their capital and operating cost and profit and loss records to the New Hampshire Department of Energy for investigation and audit, any of which records may be exempt from public disclosure under RSA 91-A:5, IV, if reasonably so designated by the Burgess BioPower Plant. All such records shall also be made filed to the Office of the Consumer Advocate and the Commission when filed with the New

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Hampshire Department of Energy. The New Hampshire Department of Energy shall conduct an investigation and audit of the plant's costs and revenues and submit a report thereon to the House Science, Technology, and Energy Committee and to the Senate Energy and Natural Resources Committee of the General Court on or before December 31, 2022, and the New Hampshire Department of Energy shall also file a copy of this report with the Commission and the Office of the Consumer Advocate contemporaneously; and it is

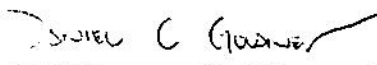
FURTHER ORDERED, that Eversource shall cause a copy of this order to be published on its website within one business day of this order, and to be documented by affidavit filed with the Commission on or before August 18, 2022; and it is

FURTHER ORDERED, that persons interested in responding to this order be notified that they may submit their comments or file a written request for hearing, stating the reason and basis for a hearing, no later than August 25, 2022, for the Commission's consideration; and it is


FURTHER ORDERED, that any person interested in responding to such comments or request for hearing shall do so no later than September 1, 2022; and it is

FURTHER ORDERED, that this order shall be effective September 12, 2022, unless Eversource fails to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this eleventh day of August, 2022.



Daniel C. Goldner
Chairman



Carleton B. Simpson
Commissioner

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Service List - Docket Related

Docket#: 10-095

Printed: 8/11/2022

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Service List - Docket Related

Docket#: 19-142

Printed: 8/11/2022

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**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 22-050

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE D/B/A
EVERSOURCE ENERGY**

**Petition for Approval of Second Amendment to the Power Purchase Agreement
with Berlin Station, LLC**

**Order *Nisi* Approving Amendment
Pursuant to the Terms of SB 271 (2022 N.H. Laws, ch. 275)**

O R D E R N O. 26,705

October 14, 2022

In this order, we approve the second amendment to the power purchase agreement between Eversource and Berlin Station, LLC (Agreement), made pursuant to the legislative directive established by the General Court in 2022 N.H. Laws, ch. 275 (SB 271). This order also finds that Eversource's decision to enter into the second amendment of the Agreement, as consistent with a legislative mandate, was reasonable and in the public interest, and that Eversource shall be allowed to recover all costs of the amended Agreement via a non-bypassable rate mechanism as directed by SB 271.

On August 26, 2022, Public Service Company of New Hampshire d/b/a Eversource (Eversource, or the Company) filed its petition and second amendment to the Company's Agreement with Berlin Station, LLC. This filing was made pursuant to the terms of the Commission's Order No. 26,665 (August 11, 2022), issued in Docket Nos. DE 10-195, and DE 19-142, the predecessor dockets to this instant matter, and the terms of SB 271. Order No. 26,665 outlines the background related to SB 271 and the Agreement between Eversource and Berlin Station, LLC, which owns and operates the Burgess BioPower Plant located in Berlin, New Hampshire, a 75-megawatt facility

that generates electrical power from burning low-grade wood, with the output sold to Eversource to meet a portion of the electrical energy needs of Eversource's default service customers. Order No. 26,665 at 1-2.

The Office of the Consumer Advocate (OCA) filed its letter of participation on August 29, 2022. On September 14, 2022, the Commission issued a procedural order clarifying certain matters relating to records to be made available to the OCA and the New Hampshire Department of Energy (DOE) and requesting that the DOE file its recommendation regarding the second amendment to the Agreement by September 23, 2022. On September 27, 2022, the DOE filed its recommendation, supporting Commission approval of the second amendment proposed by the Company.

Eversource's proposed second amendment relates to Section 6.1.4 of the Agreement. It presents the following language:

Notwithstanding Section 6.1.2 above, beginning with the Operating Year ending on November 30, 2023, if at the end of any Operating Year other than the last Operating Year during the Term, there exists a Cumulative Reduction in excess of One Hundred Million Dollars (\$100,000,000), such excess ("Excess Cumulative Reduction") will be credited against amounts otherwise due for Energy delivered to [the Company] during the subsequent Operating Year until such Excess Cumulative Reduction is eliminated. To effect such credit, in each month during the subsequent Operating Year, one twelfth (1/12th) of the Excess Cumulative Reduction ("Monthly Energy Credit") shall be deducted by [the Company] from the Seller's [Berlin Station, LLC's] invoice, up to the full amount of the payment due to Seller pursuant to Section 6.1.2(a), and any excess over that amount shall carry forward to the following month to the Monthly Energy Credit. If, at the end of the Operating Year subsequent to the year during which there was an Excess Cumulative Reduction, any such amount remains, it shall be deducted by [the Company] from the Seller's invoice in the next Operating Year in the same manner described above. If upon expiration of the Term [the Company] does not purchase the facility [Burgess BioPower Plant], Seller shall pay [the Company] the amount of any Excess Cumulative Reduction.

Eversource contends, and the DOE concurs, that this modification to the Agreement effectuates the intent of SB 271, in that the suspension of the cap on the

cumulative reduction factor relating to the Agreement is to continue for one additional year. This cap was originally established by the Commission in Order No. 25,213 (April 18, 2011), and subsequently modified by Commission Order No. 26,198 (December 5, 2018), and Order No. 26,333 (February 18, 2020), and legislative action through 2018 N.H. Laws, chapter 340 (SB 577). See Order No. 26,333 at 1–4. These changes had the effect of suspending the cap for a three-year period starting on December 1, 2019, and ending on November 30, 2022. It was the intent of SB 271 to extend the suspension of the cap for one additional year, through November 30, 2023. We agree with Eversource and the DOE that the proposed second amendment to the Agreement accomplishes this task, and we will therefore approve it without modification or conditions.

The Company further requests Commission findings that its decision to enter into the second amendment of the Agreement consistent with a legislative mandate was reasonable and in the public interest, and a Commission order that Eversource shall be allowed to recover all costs of the amended Agreement from customers via a non-bypassable rate mechanism. We find that the amended agreement is consistent with SB 271 and grant Eversource's request.

Based upon the foregoing, it is hereby

ORDERED NISI, that pursuant to the terms of SB 271, the second amendment to the Agreement between Eversource and Berlin Station, LLC, as delineated above, is APPROVED; and it is

FURTHER ORDERED, that Eversource's decision to enter into the second amendment of the Agreement consistent with a legislative mandate was reasonable and in the public interest; and it is

FURTHER ORDERED, that Eversource shall be allowed to recover all costs of the amended Agreement from customers via a non-bypassable rate mechanism as directed by 2022 N.H. Laws, ch. 275; and it is


FURTHER ORDERED, that Eversource shall cause a copy of this order to be published on its website within one business day of this order, and to be documented by affidavit filed with the Commission on or before October 21, 2022; and it is

FURTHER ORDERED, that persons interested in responding to this order be notified that they may submit their comments or file a written request for hearing, stating the reason and basis for a hearing, no later than October 28, 2022 for the Commission's consideration; and it is


FURTHER ORDERED, that any person interested in responding to such comments or request for hearing shall do so no later than November 4, 2022; and it is

FURTHER ORDERED, that this order shall be effective November 14, 2022, unless Eversource fails to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of October, 2022.



Daniel C. Goldner
Chairman



Carleton B. Simpson
Commissioner

Service List - Docket Related

Docket#: 22-050

Printed: 10/14/2022

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EXHIBIT 5

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 23-091

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

Petition for Adjustment of Stranded Cost Recovery Charge

**COMMENCEMENT OF ADJUDICATIVE PROCEEDING AND NOTICE OF HEARING,
STATUS CONFERENCE, AND DATA REQUESTS**

On December 15, 2023, Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource or the Company) filed a petition requesting that the Commission approve an adjustment to its stranded cost recovery charge (SCRC) for effect on February 1, 2024. In support of its petition, Eversource filed the direct testimony of Yi-An Chen and Edward Davis, both personnel with Eversource's service-company affiliate, Eversource Energy Service Company, and related attachments, including proposed revised tariffs. The petition and other docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are available on the Commission's website at <https://www.puc.nh.gov/Regulatory/Docketbk/2023/23-091.html>.

I. BACKGROUND

The SCRC is a non-bypassable charge and recovery mechanism established by the Restructuring Settlement Agreement dated August 2, 1999 in Docket No. DE 99-099 (Restructuring Agreement), which was revised and conformed in compliance with the Commission's Order No. 23,549 (September 8, 2000). Its original purpose was to recover a portion of Eversource's stranded costs, and other costs and expenses permitted by the Restructuring Agreement. Restructuring Agreement, Subsection V.B. These stranded costs were divided into three parts: Part 1 was the Rate Reduction

Bonds (RRB) charge; Part 2 consisted of ongoing stranded costs associated with restructuring; and Part 3 costs were the remaining non-securitized stranded costs. *Id.*

The original Part 1 and Part 3 stranded costs have been fully recovered. *Pub. Serv. Co. of N.H.*, Order No. 26,569, at 3 (January 25, 2022). In Docket No. DE 14-238, the Commission approved the 2015 Restructuring and Rate Stabilization Agreement, filed on June 10, 2015 and amended January 26, 2016 (2015 Agreement), which allowed Eversource to recover stranded costs associated with Eversource's divestiture of its generation facilities as new Part 1 costs. *See* Order No. 26,569, at 3 (citing *Pub. Serv. Co. of N.H.*, Order No. 25,920 (July 1, 2016)). In addition, the 2015 Restructuring and Rate Stabilization Agreement provided that Eversource could recover, as Part 2 costs, ongoing independent power producer costs and power purchase agreement (PPA) costs, such as Eversource's existing commitments to buy power from the Burgess BioPower facility in Berlin, New Hampshire (Burgess Plant) and Lempster Wind Power Project in Sullivan County, New Hampshire. *See* 2015 Agreement, Subsections II and III.A.

Pursuant to the 2015 Agreement, the SCRC is allocated to each rate class by different percentages, and there is no uniform SCRC rate charged to all customers or a uniform SCRC rate for each class. Order No. 26,569 at 3-4. The 2015 Agreement required the Company to calculate Part 2 costs for prospective 6-month periods. 2015 Agreement, Subsection III.A.2.

Eversource also uses the SCRC to recover and refund a number of other costs and revenues. Excess Regional Greenhouse Gas Initiative auction proceeds are refunded to Eversource customers through the SCRC pursuant to RSA 125-O:23, II and Order No. 25,664, at 4-5 (May 9, 2014), issued in Docket No. DE 14-048. In Docket No. DE 19-057, the Commission approved a settlement agreement permitting

Eversource to recover certain environmental remediation costs through the SCRC. *Pub. Serv. Co. of N.H.*, Order No 26,433 at 14, 22 (Dec. 15, 2020). The Commission also approved a settlement agreement in Docket No. DE 20-136 providing for an adder to the SCRC that would enable Eversource to recover net metering and group host costs. *Pub. Serv. Co. of N.H.*, Order No. 26,450, at 7-9 (Jan. 29, 2021).

Regarding the Burgess Plant, Ms. Chen's and Mr. Davis's testimony filed on behalf of the Company advised the Commission of recent legislative developments that have major implications for Eversource's calculation of the SCRC for the upcoming rate period. See Chen/Davis Testimony, December 15, 2023, at Bates Pages 22 and 23. The Company stated:

"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 [sic] (*the Company's source for the figure cited indicates approximately \$71 million: Ed.*). 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 returned back to customers...Per the terms of the PPA, the procurement of Capacity and [Renewable Energy Credit] 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 [Burgess 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." *Id.*

Eversource is currently billing residential customers an SCRC rate of 0.718 cents per kilowatt-hour (kWh), approved by the Commission in Order No. 26,768 (Jan. 30, 2023), issued in Docket No. DE 22-039. In this proceeding, Eversource has

proposed a residential SCRC rate of 0.376 cents per kWh, a reduction of 0.342 cents per kWh.

II. ISSUES PRESENTED

The filing presents, *inter alia*, the following general issues: whether the categories of costs and revenues included in Eversource's proposed SCRC rates are consistent with the requirements of RSA 374-F:3, XII(d) and/or are appropriately included consistent with prior Commission orders; whether Eversource appropriately calculated the SCRC rates to reflect the actual and estimated costs and revenues that are appropriately included in the SCRC; whether the costs Eversource seeks to recover through the proposed adjusted SCRC were prudently incurred; and whether the resulting SCRC rates are just and reasonable, as required by RSA 374:2, and RSA 378:5 and 378:7.

With regards to the matter of the Burgess Plant PPA-related charges and credits, additional specific issues are presented: whether the Chapter 340 Adder calculations and reconciliations presented by the Company are accurate, just and reasonable, and in conformity with the provisions of the Burgess Plant PPA and all other applicable law; whether the Burgess Plant refund presented by the Company, and all other credits and debits associated therewith, are accurate, just and reasonable, and in conformity with the provisions of the Burgess Plant PPA and all other applicable law; the provenance of all monies provided to Eversource ratepayers through the SCRC in connection with the Burgess Plant refund presented by the Company (i.e., the Burgess Plant owners, Eversource, or some combination thereof), and whether these arrangements proposed by Eversource are just and reasonable, and in conformity with the provisions of the Burgess Plant PPA and all other applicable law.

Based on a preliminary review of the petition, testimony, and supporting schedules presented by Eversource relating to the Burgess Plant issues, the Commission sees significant ambiguity and uncertainty in the Company's stated position regarding these matters. To aid in the Commission's review, and that of the New Hampshire Department of Energy (DOE) and the Office of the Consumer Advocate (OCA)¹, for this proceeding, the Commission is promulgating three data requests, listed below, to Eversource regarding the Burgess Plant refund accounting presented by the Company, for which the Commission requires responses not later than December 29, 2023. Furthermore, the Commission requests that the DOE, and any other interested party, file its position statement regarding the Eversource approach for the Burgess Plant issues not later than January 5, 2024. In addition to the hearing scheduled in this matter for January 19, 2024, at 9:00 a.m., the Commission will also hold a Status Conference regarding the Burgess Plant matters on January 11, 2024 at 1:00 p.m.

The Commission will be conducting any hearings scheduled in this matter in person. The Commission will consider requests to use a hybrid format to permit remote participation by a specific individual. Such requests will be granted only if the Commission determines a sufficient reason is provided for why an individual is unable to attend in person. Any party requesting a specific individual be permitted to participate remotely must file a written request with the Commission's Clerk's Office no later than fifteen days prior to the prehearing conference or hearing date. If the Commission determines that one or more individuals will be permitted to appear remotely, then individuals in the Commission's hearing room, including the Commissioners, will be broadcast on a web-enabled platform.

¹ The OCA filed a letter of participation in this matter on November 13, 2023.

III. BURGESS PLANT DATA REQUESTS

Eversource shall respond to the following Commission data requests, pursuant to RSA 374:4 and allied statutes, no later than December 29, 2023:

1. What will be the source of funding for the Burgess Plant refund, included in Eversource's SCRC filing and referenced in the Chen/Davis Testimony at Bates Pages 22-23? Will the refund amounts be paid by the Burgess Plant owner(s) in real time, or will Eversource provide the Burgess Plant refund amounts from its general operating funds, subject to future reconciliation and/or rate recovery? Has Eversource issued an actual demand of the Burgess Plant refund from the Burgess Plant owner(s) in any form, citing the Burgess Plant PPA terms? If so, when and how?
2. Eversource shall provide a more comprehensive narrative description, with supporting tabular presentations and source information citing data through additional attachments as necessary, indicating the flow of Burgess Plant-associated monies in the upcoming SCRC rate period, including any deferral accounts and/or deductions, citing the terms of the Burgess Plant PPA and other applicable authorities that support these adjustments.
3. For Burgess, Eversource shall also provide a simplified one-page summary with reference footnotes to the testimony and relevant attachments, of the \$71 million that is due to ratepayers over the 12-month period, February 1, 2023 to Jan 31, 2024 and the line items added or deducted from the \$71 million to determine the total refund due to ratepayers attributable to Burgess. The total Burgess refund should be reflected as an annualized number delineating the adjustments from Burgess, with source information, that will yield the final dollar value due to ratepayers over this period.

Based upon the foregoing, it is hereby

ORDERED, that an adjudicative proceeding be commenced for the purpose of reviewing and resolving the foregoing issues pursuant to RSA Chapter 541-A, RSA 374-F:3, XII(d), RSA 374:2, RSA 378:5 and RSA 378:5 and RSA 378:7, and the Commission's procedural rules; and it is

FURTHER ORDERED, that the Commission will hold a hearing in this matter at its offices located at 21 S. Fruit St., Suite 10, Concord, New Hampshire, on January 19, 2024, at 9:00 a.m. Three hours shall be allotted for this hearing; and it is

FURTHER ORDERED, that Eversource shall file its responses to the above Data Requests not later than the close of business on December 29, 2023; and it is

FURTHER ORDERED, that the New Hampshire Department of Energy, and any other interested party, file its written statement of position regarding the Burgess Plant-related issues delineated herein no later than the close of business on January 5, 2024; and it is

FURTHER ORDERED, that the Commission will hold a Status Conference regarding the Burgess Plant-related issues delineated herein at its offices located at 21 S. Fruit St., Suite 10, Concord, New Hampshire, on January 11, 2024, at 1:00 p.m. Three hours shall be allotted for this Status Conference; and it is

FURTHER ORDERED, that any entity or individual may petition to intervene and seek to be admitted as a party in this proceeding. Each party has the right to have an attorney represent the party at the party's own expense; and it is

FURTHER ORDERED, that, consistent with N.H. Admin. R., Puc 203.17 and Puc 203.02, any entity or individual seeking to intervene in the proceeding shall file with the Commission a petition to intervene with copies sent to Eversource and any other parties on the service list, on or before December 29, 2023. The petition shall

state the facts demonstrating how the petitioner's rights, duties, privileges, immunities, or other substantial interests may be affected by the proceeding, consistent with N.H. Code Admin. Rules, Puc 203.17; and it is

FURTHER ORDERED, that any party objecting to a petition to intervene make said objection on or before January 5, 2024; and it is

FURTHER ORDERED, that parties shall file any proposed exhibits, written testimony, motions, or other documents intended to become part of the record in this proceeding with the Commission. Pursuant to the secretarial letter issued on March 17, 2020, which is posted on the Commission's website at <https://www.puc.nh.gov/Regulatory/Secretarial%20Letters/20200317-SecLtr-Temp-Changes-in-Filing-Requirements.pdf>, all Commission rules requiring the filing of paper copies are suspended until further notice. Parties may elect to submit any filing in electronic form unless otherwise ordered by the Commission. Filings will be considered filed as of the time the electronic copy is received by the Commission; and it is

FURTHER ORDERED, that routine procedural inquiries may be made by contacting the Commission's Clerk's Office at (603) 271-2431 or ClerksOffice@puc.nh.gov. All requests to the Commission should be made in a written pleading filed with the Commission. Unless otherwise authorized by law, *ex parte* communications are prohibited; and it is

FURTHER ORDERED, under N.H. Admin. R., Puc 203.12, Eversource shall notify all entities and individuals desiring to be heard at this hearing by publishing a copy of this order of notice on their websites no later than two business days after the date of issue, such publication to be documented by affidavit filed with the Commission on or before December 29, 2023. In addition, the Clerk shall publish this

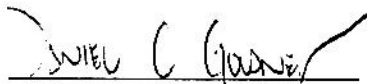
DE 23-091


- 9 -

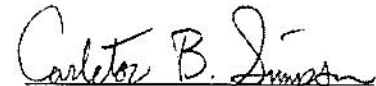
order of notice on the Commission's website no later than two business days after the date of issue; and it is

FURTHER ORDERED, that any hearings in this matter shall be conducted in accordance with the attached hearing guidelines.

So ordered, this twenty-second day of December, 2023.


Daniel C. Goldner
Chairman


Pradip K. Chattopadhyay
Commissioner


Carleton B. Simpson
Commissioner

Service List - Docket Related

Docket#: 23-091

Printed: 12/22/2023

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EXHIBIT 6

EXHIBIT K

The State of New Hampshire

ROCKINGHAM COUNTY

SUPERIOR COURT

Xpress Natural Gas, LLC

v.

Cate Street Capital, Inc.

Docket No. 218-2018-CV-00283

ORDER ON PLAINTIFF'S MOTION TO APPOINT RECEIVER

Plaintiff Xpress Natural Gas, LLC ("Xpress") has brought this action against Defendant Cate Street Capital, Inc. ("CSC") to recover on a judgment Xpress received against CSC from the Maine Superior Court. This Court recognized that judgment on March 29, 2018. See Doc. 3. The Court thereafter issued a Writ of Execution on July 26, 2018, for \$2,882,048.23. See Doc. 8. CSC has failed to pay on that judgment. Accordingly, Xpress filed a Motion for Periodic Payments on August 9, 2018. See Doc. 9. At the February 26, 2019, hearing on that motion, Xpress introduced evidence of CSC's financial situation and further moved for the Court to appoint a receiver. See Doc. 20. However, the February hearing did not reach a conclusion, and the Court allowed the parties more time for discovery and for CSC to object to the motion to appoint a receiver. The Court held another hearing on July 30, 2019, at which Xpress introduced evidence concerning a 2011 agreement that CSC had transferred to another company, Cate Street Operations ("CSO") in 2018. Upon consideration of the hearing testimony, the pleadings, and the applicable law, the Court finds and rules as follows.

In seeking the appointment of a receiver, Xpress relies on the remedies offered to creditors under the Uniform Fraudulent Transfer Act, RSA 545-A:7. Xpress claims

that CSC engaged in a fraudulent conveyance when it assigned a project management agreement worth \$1 million per year for twenty-one years to CSO for no consideration, at a time when CSC was aware of the judgment against it, in violation of RSA 545-A:5. However, the remedies provided by the Uniform Fraudulent Transfer Act only apply to “action[s] for relief against a transfer or obligation under [RSA 545-A].” See RSA 545-A:7, I. Because this is an action to recover on a judgment, RSA 545-A:7 does not apply here, and Xpress therefore cannot rely on that statute when seeking the appointment of a receiver in this case.

That being said, the Court’s equity powers allow it to appoint a receiver in appropriate circumstances. See Munsey v. G.H. Tilton & Son Co., 91 N.H. 51 (1940). “Where there is some evil actually existing, or some evidence of danger to the property, . . . a receiver will be appointed.” Ladd v. Harvey, 21 N.H. 514, 521 (1850). “The exercise of the power to appoint a receiver must depend upon sound discretion, and in a case in which it must appear fit and reasonable that some indifferent person under approved security should receive and distribute the issues and profits for the greater security of all the parties concerned.” Id. “The basic reason for the appointment of a receiver is to conserve the property for the benefit of all persons interested therein.” Petition of Leon Keyser, Inc., 98 N.H. 198, 200 (1953).

Xpress has established that funds belonging to CSC are in danger. Although Xpress obtained a multi-million-dollar judgment against CSC in 2014, CSC’s 2016 and 2017 unsigned Federal tax returns show that \$10 million of CSC’s assets have disappeared since 2016. See Pl.’s Ex. 1, 2 (Feb. 26, 2019). Xpress has shown that although CSC had ample funds to pay the \$2,882,048.23 judgment in 2014, within

eighteen months of the issuance of that judgment, CSC's assets rapidly dried up and the corporation was dissolved. A draft of CSC's 2018 profit and loss statement introduced by Xpress also shows CSC reporting a net loss of \$9.3 million. See Pl.'s Ex. 3 (Feb. 26, 2019). CSC has not provided a reasonable explanation as to where these funds went or why they rapidly disappeared. CSC claims it decided to write off all of its impaired receivables (totaling \$3.5 million) as part of its winding down of business, which would partially explain its swift decrease in value. However, CSC provided only vague statements regarding those receivables, and no explanation regarding the rest of its assets. Under these circumstances, it appears fit and reasonable that the Court appoint a receiver.

That being said, "[t]he court cannot appoint a receiver over assets that do not exist." KeyBank Nat. Ass'n v. Michael, 737 N.E.2d 834, 846 (Ind. Ct. App. 2000). Here, CSC no longer exists as a corporate entity and claims that it has zero assets. Xpress asks the Court to revoke the project management agreement CSC assigned to CSO and give the proceeds from the agreement to the receiver to pay towards the judgment at issue. For the reasons set forth below, the Court concludes that revocation of the agreement is unnecessary. Although CSC and CSO purport to be two distinct corporations, the pleadings and the hearings have established enough facts to treat CSO as a mere continuation of CSC.

"As a general rule, one corporation is not liable for the debts of a corporation whose assets it purchases unless only one corporation remains after the transfer of assets and unless there is an identity of stock, stockholders, and directors between the two corporations." PlasTech Mach. & Fabrication, Inc. v. StemTech, Ltd., Merrimack

Cnty. Super. Ct., No. 217-2010-CV-00741, at 4 (Mar. 10, 2014) (Order, McNamara, J.). However, “successor liability may be imposed on a new corporation where the purchaser is merely the seller, reincarnated under a different entity.” Id. “While continuity of ownership is the key factor for imposing successor liability . . . , some courts also look to the adequacy of the consideration given in the asset sale and to whether there is evidence of a purchase made in good faith.” Bielagus v. EMRE of New Hampshire Corp., 149 N.H. 635, 644–45 (2003).

In PlasTech, a corporation created after the administrative dissolution of the defendant was found to be a mere continuation of the defendant. PlasTech, at *5. Both corporations did business under the same d/b/a designation, operated from the same place of business, engaged in the same business with the same vendors, and displayed information about both companies on the new corporation’s website. Id. The only employee of both corporations was also the only director and officer of both corporations. Id. In addition, the Court found evidence that the new corporation was created “for purposes of avoiding liability,” as it was created while the defendant was a judgment debtor to the plaintiff and it disposed of its assets by paying them to its sole shareholder. Id.


The facts of this case are very similar to those of PlasTech. Here, CSO operates out of the same office on Cate Street that CSC used to operate out of. CSC and CSO have all of the same managers and owners, both provide management services, they do similar work for the same vendors and have almost the same name. Moreover, CSC assigned the project management agreement to CSO for no consideration, even though CSC was to be paid \$1 million per year for fourteen more years under that agreement.

While CSC claims this assignment was made during its winding down period, it made the assignment well after the judgment at issue was rendered, thereby disposing of a contractually-guaranteed stream of income which it could have used to satisfy the judgment. Under these circumstances, the conclusion that CSO is a mere continuation of CSC is inescapable. Therefore, a receiver may be appointed to observe and hold that portion of CSO's finances that can be attributed to CSC.

Although the present record establishes that CSO is a mere continuation of CSC, CSO is not a party in this case. Pursuant to Super. Ct. Civ. R. 1(d), and in order to protect CSO's due process right to be heard at a meaningful time and in a meaningful manner, Xpress must join CSO as a defendant in this action within fourteen (14) days of the date on the Notice of Decision accompanying this Order. The Court gives CSO thirty (30) days from service to respond to and address the issues discussed in this Order. While CSO may file other pleadings within that timeframe, the filing of such additional pleadings will not toll the time that CSO has to respond to the issues discussed herein. Moreover, the Court is not inclined to hold an additional hearing on this topic except for good cause shown. Thus, if CSO wishes to challenge the factual narrative set forth herein, it must submit in the first instance affidavits or other written, sworn statements which conflict with the facts described herein. The Court will review the filings and issue an order or schedule a hearing.

So Ordered.

September 24, 2019
Date:



Marguerite L. Wageling
Presiding Justice

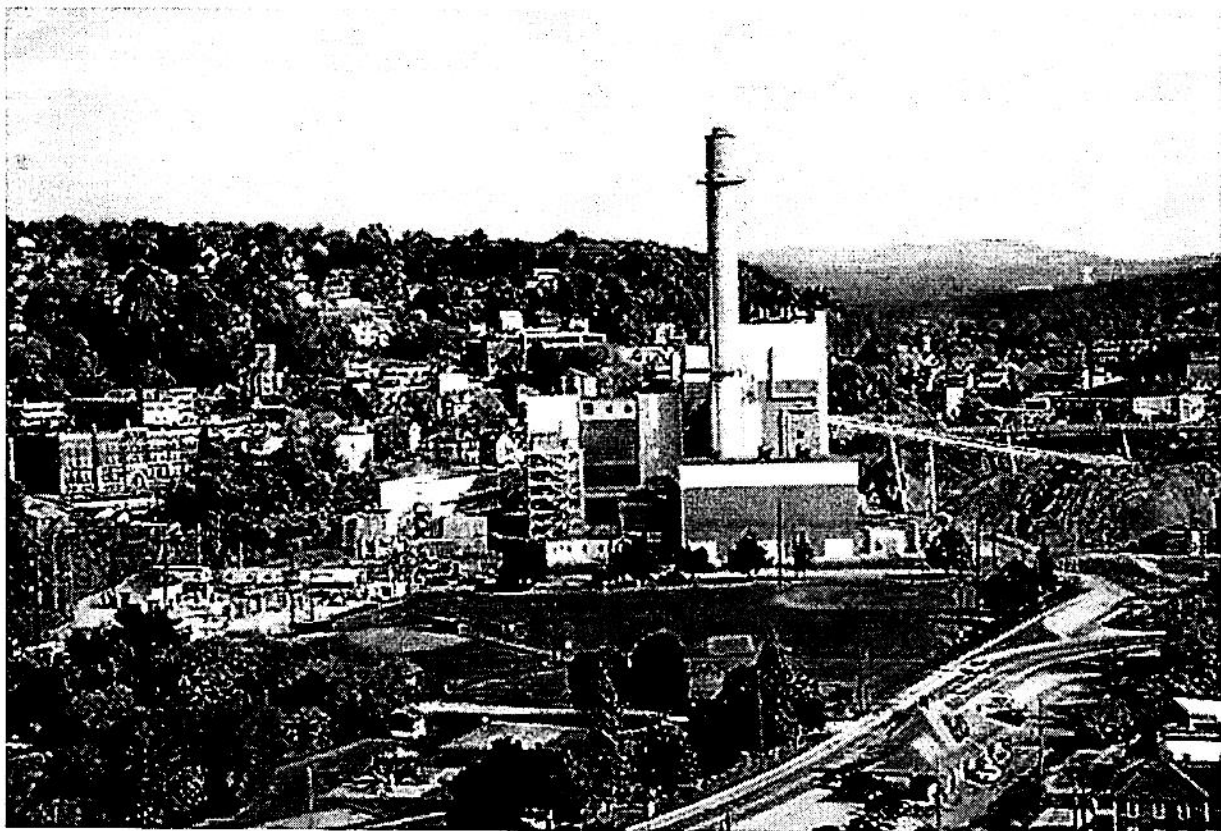
EXHIBIT 7



Burgess BioPower, LLC

Bi-Annual Report Required by Public Utilities Commission Order 26,333

May 2, 2022



I. Background on the Facility

Finding a long-term solution to the operation of the Cumulative Reduction Factor (“CRF”) contained in the Power Purchase Agreement (“PPA”) between Eversource and Berlin Station, LLC¹ is paramount to Burgess BioPower’s continued operation and the attendant economic benefits it brings to the State of New Hampshire.

Burgess BioPower is a 75MW biomass power plant that provides reliable, home-grown, baseload energy supply to New Hampshire. Burgess’ power advances the state’s goals to increase renewable energy and energy independence. Not only does Burgess BioPower contribute significantly to the State’s energy profile, the plant also generates major job and economic impacts²:

- Burgess has generated **over \$550 million in statewide economic activity** in its operating history to date, and is projected to generate **\$1.38 billion over 20 years**
- Accounts for **240 jobs** statewide
- **Largest single buyer** of low-grade biomass in the state
- New Hampshire’s **largest generator** of renewable energy

In addition to its important economic and energy impact statewide, Burgess contributes significantly to the local Berlin economy through its payments-in-lieu-of-taxes (“PILOT”) agreement with the City of Berlin:

- Burgess accounts for **25% of annual water fees** and **10% of annual sewer fees**
- Burgess pays **12% of the city’s total annual taxes**
- Burgess has contributed nearly **\$1.2 million to the City of Berlin** in just two years from the sale of Renewable Energy Certificates (“RECs”)
 - A third payment is anticipated for the summer of 2022
- Closure could place the **City of Berlin into receivership**

Burgess is also a key contributor to New Hampshire’s struggling forest products industry. Burgess BioPower purchases more than 800,000 tons of low-grade wood per year and is the largest single buyer of biomass in the state; the project procures biomass from 154 New Hampshire towns across all 10 counties in the state.

And at a time when energy diversity, grid stability, and over-reliance on foreign fuels are key issues, Burgess’ value as a baseload energy generator which runs on locally sourced fuel is more important than ever. ISO-NE has repeatedly warned of the potential consequences of New England’s over-reliance on natural gas; recent geopolitical events have further underscored the risk of dependence on out-of-state or foreign energy sources. Keeping Burgess operational hedges against these risks.

¹ Berlin Station, LLC is the site/facility owner. Burgess BioPower is the site/facility lessee.

² Impacts are outlined in an Economic Impact Study first completed in 2017, refreshed in 2020, and referenced in our November 1, 2020 report.

Burgess BioPower, LLC

Bi-Annual Report to NH PUC
May 2, 2022

A breakdown of Burgess' expenditures in key categories from January 2020 through March 2022 is shown below:

Expenditure	Amount
Taxes	3,416,575.69
Berlin Water Works	1,550,961.42
Berlin Pollution Control Facility	382,146.68
REC Revenue Sharing	\$1,174,781
Payments to other local businesses	2,365,078.98
Payments to other NH businesses	7,824,174.93
Wood purchases	54,806,697.35

II. Efforts and Challenges to Developing a Long-Term Solution

As documented at length in past reports, Burgess BioPower has undertaken a variety of efforts to find a long-term solution to the CRF challenge, which are summarized again below. Most of these activities took place while simultaneously functioning as an Essential Service throughout the COVID-19 pandemic, generating power without interruption in full compliance with all regulatory mandates.

The Burgess team invested significant time and resources to fully develop a Contract for Differences ("CFD") with Eversource. A CFD is a proven financial tool used extensively in commodity markets, and acts like a "virtual PPA" to limit the exposure of both parties to market price swings. The CFD would have allowed Burgess to reduce or eliminate the accumulation of the CRF and its contribution to stranded cost recovery, but the challenges posed by the default service bidding requirements from Eversource and the PUC proved too great.

Lastly, Burgess pursued other regional economic development projects to reduce and offset the costs of Burgess' power, such as co-development of a number of suitable businesses including a greenhouse, a data center, and a cryptocurrency mining operation; location of an on-site energy generation system using landfill gas; working with the City of Berlin on a waste heat recovery and municipal snowmelt project; and development of ground-mounted solar resources.

The common denominator among all potential co-location partners is simple: no one is willing to put capital at risk to develop a project which relies on a power plant with an uncertain future. Permanently resolving the CRF is the only way any synergistic project will move forward.

III. Status Conference Request

In February 2022, Burgess filed a motion with the NH Public Utilities Commission ("PUC") to convene a status conference with the parties to the DE 19-142 proceeding. The intent of the filing was to convene interested parties in order to discuss and resolve the issues associated with the

docket, including the CRF balance, possible changes to the PPA that would balance costs to ratepayers with protecting the ongoing operation of Burgess, and alternative paths forward.

The PUC denied the motion.

IV. Legislative Activity

In January 2022, Burgess introduced SB 271, legislation which intended to clarify the cost recovery issues with SB 577 and resolve the outstanding balance owed as a result.

The bill was introduced in the Senate, where it was referred to the Energy and Natural Resources Committee (“ENR”). ENR unanimously passed an amended version of the bill, which was again unanimously passed by the full Senate on the Consent Calendar. The version of the bill passed by the Senate is available [here](#).

SB 271 then moved to the House of Representatives, where it was referred to the Science, Technology and Energy Committee (“STE”). STE, acting through its Chair, Rep. Vose, proposed its own amendment, which provides for a continued one-year suspension of the cap on the CRF and requires Burgess BioPower to submit its financial records to the Department of Energy for investigation and audit.³ STE adopted this amendment by a 20-2 vote. The bill will now go to the full House for consideration in early May.

V. Conclusion

Ultimately, any long-term solution will require the input and cooperation of various stakeholders.

Should Burgess close, ratepayers would lose their existing \$100 million investment, the forest products industry would suffer further, and the state of New Hampshire would lose 240 jobs and \$1.4 billion in economic activity, along with a baseload power resource that uses local fuel.

Burgess BioPower remains hopeful that the legislative and regulatory processes will result in an outcome that allows the plant to continue operating long-term so that it can continue to contribute to New Hampshire’s energy, environmental, and economic goals.

³ In Order 26,333, the Commission required Burgess to provide cost and profitability records during the SB 577 three-year period. Burgess has submitted that information annually. In addition, while Burgess could have sought confidential treatment of that information, it chose not to, in order to provide transparency regarding its operations.

EXHIBIT 8

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

GNP MAINE HOLDINGS, LLC,

Debtor.

Chapter 7

Case No. 14-12179 (MFW)

Hearing Date: TBD

Objection Deadline: TBD

**PETITIONING CREDITORS' MOTION TO (1) TRANSFER VENUE
PURSUANT TO 28 U.S.C. § 1412 AND FED. R. BANKR. P. 1014, AND (2)
RESCHEDULE MEETING OF CREDITORS PURSUANT TO 11 U.S.C. §§ 105
AND 341 AND FED. R. BANKR. P. 2003**

Petitioning creditors Hartt Transportation Systems, Inc., Lynch Logistics, Inc., and Lynco, Inc. (the "Petitioning Creditors") hereby request that the Court enter an order (1) transferring bankruptcy proceedings for GNP Maine Holdings, LLC (the "Debtor") to the United States Bankruptcy Court for the District of Maine (the "Maine Court"), and (2) rescheduling the meeting of creditors (currently scheduled for October 15, 2014) until after the Court decides the venue issue. In support of this motion (the "Motion"), the Petitioning Creditors state as follows:

PRELIMINARY STATEMENT

Chapter 7 bankruptcy cases are currently pending by the Debtor in this Court, and against the Debtor in the Maine Court. This Court must now decide which of these two courts is the proper venue based on "the interest of justice or for the convenience of the parties." 28 U.S.C. § 1412. Applying the relevant factors under applicable law, the clear focus of the Debtor's bankruptcy case is in Maine, and the only connection to Delaware is that the Debtor is a Delaware entity. *First*, based on the matrix of creditors filed by the Debtor, more than 56% of the creditor body is in Maine, while less than 1% is in

Delaware, and numerous Maine creditors have consented or expressed support for the relief requested in this Motion. Moreover, upon information and belief, all of the Debtor's assets and operations are in Maine. *Second*, upon information and belief, most relevant witnesses, including current and former employees and managers, reside in Maine. *Third*, the case may be more economically administered in Maine because of the Maine Court's familiarity with the history, operations, and constituencies involved, having presided over a previous bankruptcy involving the same mill assets filed in 2002 (and still pending) before the Maine Court. Further, the administrative costs of the case relating to professional fees and travel will be lower in Maine, and thus the distribution to creditors will be enhanced. *Fourth*, those representing the public interest – including Maine's Attorney General, the towns of East Millinocket and Millinocket, and the employees' unions – have indicated support for the Motion. The Maine-based controversies that are likely to arise in this case should be decided by the Maine Court. For these reasons, the Petitioning Creditors request that the Court enter an order transferring venue to Maine.

A meeting of creditors is currently scheduled in this matter for October 15, 2014. Given that the relevant venue factors all point to Maine, not Delaware, the Petitioning Creditors do not see what can possibly be gained by holding a meeting so far removed from most of the Debtor's active creditor body, which wishes to be meaningfully involved in examining the Debtor about its operations, assets, and liabilities at such a meeting. They are also concerned that much may actually be lost by a temporary trustee incurring unnecessary and duplicative administrative expenses preparing for such a rushed meeting when the Debtor has, to date, failed to file any of its schedules and

statements. Given that there is little to be gained from holding the meeting on October 15th, and much may be lost as a result, the Petitioning Creditors request that the Court exercise its inherent authority to reschedule the meeting.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157(a), and the standing order of reference entered by the United States District Court for the District of Delaware on February 29, 2012.

2. This matter is a core proceeding under 28 U.S.C. § 157(b)(2), and this Court has Constitutional authority to enter a final order on this Motion.

3. Venue is proper both in this Court and in the Maine Court pursuant to 28 U.S.C. §§ 1408 and 1409.

FACTUAL BACKGROUND

4. On September 22, 2014 (the "Petition Date"), the Debtor filed a voluntary petition for relief in this Court pursuant to chapter 7 of title 11 of the United States Code (the "Bankruptcy Code").

5. According to a video posted on the Debtor's website, the Debtor's paper mill in northern Maine has operated for over 100 years, and at the turn of the century, the mill was the largest paper mill in the world. See www.greatnorthernpaper.com. Upon information and belief, all the Debtor's assets and operations are located in Millinocket and East Millinocket, Maine.

6. On the Petition Date, the Debtor also filed: (a) a creditors' matrix listing 1,159 creditors, including 652 creditors in Maine (56.25%) and only 10 in Delaware

(.86%); and (b) a disclosure that the Debtor paid its Delaware attorney \$135,302 in the 3 days prior to the Petition Date.

7. A meeting of creditors under section 341 of the Bankruptcy Code has been scheduled in Wilmington, Delaware on October 15, 2014 (the “Meeting of Creditors”).

8. On September 23, 2014, without notice or knowledge of the voluntary filing, the Petitioning Creditors filed an involuntary petition for relief against the Debtor under chapter 7 of the Bankruptcy Code in the Maine Court, Case No. 14-10756.

9. Promptly upon learning of the Debtor’s voluntary filing in this Court, the Petitioning Creditors filed a notice with the Maine Court pursuant to Rule 1014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) advising the Maine Court of the case pending before this Court, and on September 24, 2014, the Maine Court entered an order staying further proceedings “pending determination by the Delaware Bankruptcy Court where the case should proceed.”

10. On September 24, 2014, the Petitioning Creditors also filed a notice with this Court pursuant to Bankruptcy Rule 1014 advising this Court of the case pending before the Maine Court, and on September 25, 2014, this Court entered an order scheduling a status conference in this case for October 22, 2014.

11. Prior to filing this Motion, counsel for the Petitioning Creditors discussed the relief requested herein with other central constituencies of the Debtor’s creditor body.

- (a) Maine’s Attorney General, through counsel, has indicated her support for transferring venue to the Maine Court.
- (b) The towns of Millinocket and East Millinocket, through counsel, have indicated their support for transferring venue to the Maine Court and anticipate filing papers joining in the Motion.

- (c) The United Steelworkers and the International Association of Machinists and Aerospace Workers (together, the “Unions”) represent most of the Debtor’s current and former employees. Through counsel, the Unions indicate that, under the circumstances of this case, they support transferring venue to the Maine Court so that the Debtor’s employees and their local representatives may more easily and fully participate.
- (d) As of the time of the filing of this Motion, the following trade creditors listed on the Debtor’s creditors’ matrix have consented to the Motion, either directly or through counsel: Affiliated Healthcare Systems of Bangor, Maine; Cross Insurance of Bangor, Maine; SPC Transport, Co. of Auburn, Maine; H.C. Haynes, Inc. of Winn, Maine; Timberland Trucking, Inc. of Millinocket, Maine; Gerald Pelletier, Inc. of Millinocket, Maine; Millinocket Fab & Machine Inc. of Millinocket, Maine; Maine Environmental, LLC of Hermon, Maine. The Petitioning Creditors will supplement this list as necessary.

RELIEF REQUESTED

12. Pursuant to 28 U.S.C. § 1412 and Bankruptcy Rule 1014, the Petitioning Creditors request that this Court enter an order transferring venue for the Debtor’s bankruptcy proceedings to the Maine Court “in the interest of justice or for the convenience of the parties.”

13. Pursuant to sections 105 and 341 of the Bankruptcy Code and Bankruptcy Rule 2003, the Petitioning Creditors further request that this Court enter an order rescheduling the Meeting of Creditors until after the Court decides the venue issue.

BASIS FOR RELIEF

I. Venue Transfer

A. Relevant Legal Standard

14. Under 28 U.S.C. § 1412, a court “may transfer a case or proceeding under title 11 to a district court for another district, in the interest of justice or for the convenience of the parties.” Under Bankruptcy Rule 1014, this standard applies whether

the court is considering venue issues in the context of a single case in a single district, or multiple cases in multiple districts, relating to a single debtor.

15. The decision to transfer venue is solely within the discretion of the bankruptcy court. In re Centennial Coal, Inc., 282 B.R. 140, 146 (Bankr. D. Del. 2002). The party requesting transfer of forum bears the burden of proof, but “if the party meets its burden by the preponderance of the evidence, the court in its discretion may transfer a case in the interest of justice or for the convenience of the parties.” In re Rehoboth Hospitality, LP, No. 11-12798 (KG), 2011 WL 5024267, at *3 (Bankr. D. Del. Oct. 19, 2011).

16. In determining whether to transfer a case, bankruptcy courts consider the following relevant factors:

- (a) proximity of creditors of every kind to the court;
- (b) proximity of the debtor;
- (c) proximity of witnesses who are necessary to administration of the estate;
- (d) the location of the debtor’s assets;
- (e) the economic administration of the estate; and
- (f) the necessity for ancillary administration in the event of liquidation.

In re Innovative Commc’n Co., 358 B.R. 120, 126 (Bankr. D. Del. 2006); see also 1 Alan Resnick & Henry Sommer, Collier on Bankruptcy ¶ 4.05[3][a][ii], at 4-33 to 4-34 (16th ed. rev. 2014).

17. The court “also has discretion to consider other private and public interest factors.” In re Qualteq, Inc., No. 11-12572 (KJC), 2012 WL 527669, at *5 (Bankr. D. Del. Feb. 16, 2012) (citing Innovative Commc’n, 358 B.R. at 126-27). Such private and public interest factors include “the state’s interest in having local controversies decided

within its own borders.” Hechinger Inv. Co. of Del., v. M.G.H. Home Improvement, Inc., 288 B.R. 398, 402-03 (Bankr. D. Del. 2003).

B. Venue Should be Transferred to Maine Because (1) Most of the Debtor’s Creditors and All of its Assets and Operations Are in Maine, (2) Most Witnesses Necessary to Administration of the Estate Are in Maine, (3) the Case May be More Economically Administered in Maine, and (4) Maine has a Public Interest in Having Local Controversies Decided Within its Own Borders

18. In the Debtor’s case, the factors relevant to venue favor Maine, rather than Delaware. *First*, while the Debtor itself is undisputedly a Delaware entity, none of its assets or operations are in Delaware. Over 56% of the Debtor’s creditors are in Maine, while less than 1% are in Delaware. As one bankruptcy court noted in a similar venue dispute between Massachusetts and Delaware:

[T]he Debtor’s contacts with Delaware are minimal Other than the Debtor being incorporated there . . . there is no other apparent connection to Delaware The Debtor’s contacts with Massachusetts are substantial, more so than any other place in the World. The Debtor’s operations are here; its assets are here; its current and former employees are here; and its management is here. Many of its creditors (measured in both numbers of creditors and the amounts owed to them) are here, too, notably from the list of the 30 largest unsecured creditors Clearly, the Debtor’s venue selection was not based on the convenience of these constituencies given their geographic connection to Massachusetts.

In re Malden Mills Indus., Inc., 361 B.R. 1, 10 (Bankr. D. Mass. 2007) (Rosenthal, J).

Similarly in this case, the Debtor’s contacts with Delaware are minimal, while the contacts with Maine “are substantial, more so than any other place in the World.” This factor, therefore, favors transfer to Maine.

19. *Second*, most key witnesses necessary to resolve disputes about administration of the Debtor’s estate, such as current and former employees and managers, are likely in Maine, not Delaware. Thus, these witnesses are likely beyond

this Court's subpoena power. Even if such witnesses are willing to voluntarily appear in Delaware to participate in these proceedings, the travel costs would impose a significant expense on the estate. This factor also favors transfer to Maine.

20. *Third*, the Debtor's bankruptcy proceedings may be more economically administered in Maine than Delaware. The Maine Court is very familiar with the Debtor's history, operations, and constituencies, having presided over previous bankruptcy proceedings involving the same mill assets that began in 2002 and still remains pending before the Maine Court today. See Malden Mills, 361 B.R. at 10 ("This Court is very familiar with the facts and litigants, having presided over the Debtor's previous reorganization in Massachusetts."); see also In re Consol. Equity Props., Inc., 136 B.R. 261, 267 (D. Nev. 1991) (transferring venue from Texas to Nevada due to Nevada court's familiarity with facts). The Maine Court's familiarity will likely provide great efficiency to resolving this case. Further, administrative expenses relating to professional fees and travel will be dramatically lower in Maine than in Delaware, and thus the ultimate distribution to creditors will be enhanced. This factor also favors transfer to Maine.

21. *Fourth*, Maine has a substantial public interest in having local controversies resolved by courts within its borders. The largest "public interest" creditors and parties-in-interest – the State of Maine (through its Attorney General) and the towns of Millinocket and East Millinocket (where the Debtor's assets are located) – have indicated support for venue transfer to Maine. The Maine-based controversies that are likely to arise in this case should be decided by the Maine Court. For instance, the town East Millinocket has contracted with the Debtor to have its municipal wastewater treated

by the mill's secondary wastewater treatment plant; the potential health and safety issues are local ones. Similarly, given the cold temperatures this time of year in northern Maine, the Debtor's mill must be begin to be heated in the near term to maintain the operability and value of the paper machines; again, this issue is best handling locally rather than remotely. Further, the Unions, which represent most of the Debtor's current and former employees – nearly all of whom reside in northern Maine – have expressed support for this Motion under the circumstances of this case so that the employees and their local representatives may more easily participate. This factor also favors transfer to Maine.

22. Given the context of this matter, and thus the weight of the factors tips strongly toward Maine under 28 U.S.C. § 1412 and Bankruptcy Rule 1014.

II. Rescheduling Meeting of Creditors

A. Relevant Legal Standard

23. A meeting of creditors must be held “within a reasonable time after the order for relief . . . [and] the United States Trustee shall convene and preside” at such a meeting. 11 U.S.C. § 341(a). In general, the meeting must “be held no fewer than 21 and no more than 40 days after the order for relief.” Fed. R. Bankr. P. 2003(a). The statute and rules provide certain exceptions to both the scheduling and timing of such meetings. See, e.g., 11 U.S.C. § 341(e) (pre-packaged plan filed); Fed. R. Bankr. P. 2003(a) (appeal of motion to vacate order for relief; motion to dismiss case).

24. “Although the rules do not address the issue, there is little doubt that the court has authority to change the date of the section 341 meeting or to make other orders concerning the meeting.” 3 Collier on Bankruptcy ¶ 341.02[1], at 341-7; see also In re

Vance, 176 B.R. 772 (Bankr. W.D. Va. 1995) (“It is, therefore, imperative and appropriate that this Court have jurisdiction over section 341 meetings, their scheduling, continuances, and so forth, if necessary”); In re Astri Inv., Mgmt. & Secs. Corp., 88 B.R. 730 (D. Md. 1988).

B. The Meeting of Creditors Should be Rescheduled to Avoid Unnecessary and Duplicative Administrative Expenses and to Ensure That the Meeting Serves the Core Purposes of 11 U.S.C. § 341

25. As described above, the relevant venue factors all point to Maine, not Delaware. In light of this, the Petitioning Creditors do not see what can possibly be gained by rushing to hold the Meeting of Creditors in Wilmington, Delaware, far removed from most of the Debtor’s creditors and other parties-in-interest, who are located in northern Maine.

26. *First*, the Debtor’s insolvency in Maine has been an unusually extended and public affair. Since the Debtor shuttered its mill in early 2014, there have been dozens of news stories in Maine about the Debtor’s failure to pay its creditors, including municipal taxes and trade vendors. According to public records, approximately 20 trade creditors, including the Petitioning Creditors, have obtained judgments and were in various stages of enforcement and execution on the Petition Date. The municipal creditors had or were in the process of recording liens against the Debtor’s assets. This active creditor body wishes to be involved in examining the Debtor at any meeting of creditors, and holding such a meeting in Delaware rather than Maine will deny these creditors meaningful involvement.

27. *Second*, as of the date of this Motion, the Debtor has failed to file any of its required schedules and statements. Rushing to hold the Meeting of Creditors without

the benefit of this foundational information about assets and liabilities undermines “[t]he chief function of the meeting” which is “for creditors to . . . examine the debtor and be heard generally in an advisory capacity on questions concerning administration of the estate.” 3 Collier on Bankruptcy ¶ 341.01, at 341-4. Asking creditors to proceed with the Meeting of Creditors in any forum without the opportunity to analyze this information is both wasteful and unproductive. Moreover, even if the Debtor files the schedules and statements within the time allowed by Bankruptcy Rule 2003(a), the trustee and creditors will have only a week to analyze the documents, which may be insufficient time to examine the anticipated volume of documents.

28. *Third*, the Petitioning Creditors are concerned about the administrative expenses that will be incurred if the interim trustee holds the Meeting of Creditors before the Court decides the venue issues. The trustee will certainly need to expend significant time and resources to adequately prepare for the meeting and learn about the Debtor’s business operations, assets, and liabilities. If the matter is promptly transferred to Maine, as requested above, an eligible interim trustee can promptly schedule and hold a meeting of creditors in Maine, close to most of the Debtor’s creditors and other parties-in-interest.

29. *Fourth*, some have suggested that the Meeting of Creditors should be held promptly in Delaware, and if this Court transfers the case to Maine, the new trustee may hold an additional meeting. This sort of unnecessary duplication of efforts in the two jurisdictions will harm creditors and reduce the funds available for an ultimate distribution.

30. For these reasons, the Petitioning Creditors request that the Meeting of Creditors be rescheduled until after the Court decides venue issues.

WHEREFORE, the Petitioning Creditors respectfully request that the Court enter an order (1) granting the Motion, (2) transferring venue of the Debtor's bankruptcy proceedings to the Maine Court pursuant to 28 U.S.C. § 1412 and Bankruptcy Rule 1014, and (3) rescheduling the Meeting of Creditors until after the Court decides venue issues pursuant to sections 105 and 341 of the Bankruptcy Code and Bankruptcy Rule 2003.

Dated: September 26, 2014
Wilmington, DE

BAYARD, P.A.

/s/ Evan T. Miller

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	Chapter 7
GNP MAINE HOLDINGS, LLC,	Case No. 14-12179 (MFW)
Debtor.	<u>Related D.I.:</u> _____

ORDER GRANTING PETITIONING CREDITORS' MOTION TO (1) TRANSFER VENUE PURSUANT TO 28 U.S.C. § 1412 AND FED. R. BANKR. P. 1014, AND (2) RESCHEDULE MEETING OF CREDITORS PURSUANT TO 11 U.S.C. §§ 105 AND 341 AND FED. R. BANKR. P. 2003

Upon the Petitioning Creditors' *Motion to (1) Transfer Venue Pursuant to 28 U.S.C. § 1412 and Fed. R. Bankr. P. 1014, and (2) Reschedule Meeting of Creditors Pursuant to 11 U.S.C. §§ 105 and 341 and Fed. R. Bankr. P. 2003*,¹ and upon all documentation filed in connection with the Motion, including any objections thereto; and notice of the Motion having been properly and sufficiently provided; and it appearing that no other or further notice is required; and sufficient cause appearing therefor;

IT IS HEREBY:

1. ORDERED that the Motion is GRANTED; and it is further
2. ORDERED that venue of the Debtor's bankruptcy proceedings is hereby transferred to the United States Bankruptcy Court for the District of Maine pursuant to 28 U.S.C. § 1412 and Fed. R. Bankr. P. 1014 in the interests of justice or for the convenience of the parties; and it is further
3. ORDERED that the Meeting of Creditors scheduled for October 15, 2014 is hereby cancelled pursuant to 11 U.S.C. §§ 105 and 341 and Fed. R. Bankr. P. 2003.

¹ Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion.
(BAY:02582328v1)

Dated: _____, 2014
Wilmington, Delaware

Honorable Mary F. Walrath
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re
GNP MAINE HOLDINGS, LLC,

Debtor.

Chapter 7
Case No. 14-12179 (MFW)

Related D.I.: 10

**ORDER GRANTING PETITIONING CREDITORS' MOTION TO (1)
TRANSFER VENUE PURSUANT TO 28 U.S.C. § 1412 AND FED. R. BANKR. P.
1014, AND (2) RESCHEDULE MEETING OF CREDITORS PURSUANT TO 11
U.S.C. §§ 105 AND 341 AND FED. R. BANKR. P. 2003**

Upon the Petitioning Creditors' *Motion to (1) Transfer Venue Pursuant to 28 U.S.C. § 1412 and Fed. R. Bankr. P. 1014, and (2) Reschedule Meeting of Creditors Pursuant to 11 U.S.C. §§ 105 and 341 and Fed. R. Bankr. P. 2003*,¹ and upon all documentation filed in connection with the Motion, including any objections thereto; and notice of the Motion having been properly and sufficiently provided; and it appearing that no other or further notice is required; and sufficient cause appearing therefor;

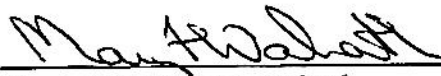
IT IS HEREBY:

1. ORDERED that the Motion is GRANTED; and it is further
2. ORDERED that venue of the Debtor's bankruptcy proceedings is hereby transferred to the United States Bankruptcy Court for the District of Maine pursuant to 28 U.S.C. § 1412 and Fed. R. Bankr. P. 1014 in the interests of justice or for the convenience of the parties; and it is further

¹ Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion.
(BAY:02582328v1)

3. ORDERED that the Meeting of Creditors scheduled for October 15, 2014 is hereby cancelled pursuant to 11 U.S.C. §§ 105 and 341 and Fed. R. Bankr. P. 2003.

Dated: Oct. 3, 2014
Wilmington, Delaware



Honorable Mary F. Walrath
United States Bankruptcy Judge