

**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**

Order Approving an Amendment to the Power Purchase Agreement

ORDER NO. 26,331

January 31, 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.

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 BioPower, LLC, now Berlin Station, LLC (Berlin Station).¹ The PPA requires Eversource to

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.

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 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 related docket filings, other than information for which confidential treatment is requested of or

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.

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

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.

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 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 0.356 ¢/kWh over the three-year suspension period.⁶ Accordingly, an average residential

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.

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.

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

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.

⁸ Due to the deferred timing of repayment and the absence of any obligation to pay interest on deferred payments by Berlin Station, repayment of the Excess Cumulative Reduction Amount will not fully compensate ratepayers.

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 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

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.

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, 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

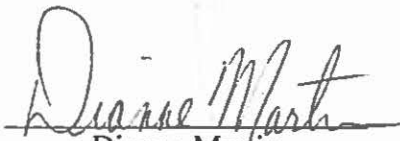
FURTHER ORDERED, that Berlin Station shall submit its cost and profitability records to the Commission annually within 60 days of the close of Berlin Station's fiscal year in each year the cumulative reduction factor cap is suspended; and it is

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

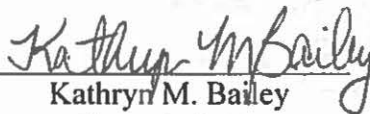
FURTHER ORDERED, that the Eversource shall file a compliance tariff with the Commission on or before February 14, 2020, in accordance with N.H. Admin. R., Puc 1603.02(b); and it is

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

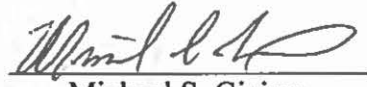
By order of the Public Utilities Commission of New Hampshire this thirty-first day of January, 2020.



Dianne Martin
Chairman

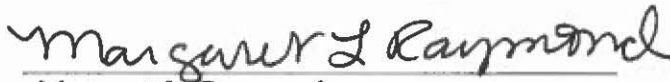


Kathryn M. Bailey
Commissioner



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Attested by:



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