

Public Service Company of New Hampshire
Docket No. DE 10-195

ORIGINAL	
N.H.P.U.C. Case No.	DE 10-195
Exhibit No.	# 11 PSNH
Witness	Panel 1
DO NOT REMOVE FROM FILE	

Record Request HD-01
Dated: 01/25/2011
ERR-001
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Witness: Richard C. Labrecque, Gary A. Long, Terrance J. Large
Request from: New Hampshire Public Utilities Commission Staff

Question:

(Exhibit PSNH-11): What authority does the Seller have to bind other parties with ownership interests related to the project to the company's right of first refusal?

Response:

We take this question to refer to PPA Sec. 7.1 "Right of First Refusal." This section provides that if Seller (Laidlaw Berlin Biopower, LLC) desires to sell any of its interests in the Facility, including associated interests or rights in the Site, but *other than* in a sale/leaseback financing or similar type of financing, it will provide PSNH with a right of first refusal on such transaction. We expect that the Facility and the Site will be leased to Seller as part of the Facility's financing arrangements, and the right of first refusal in Sec. 7.1 would not extend to the ownership/lesser arrangements in that circumstance. Rather, PSNH would hold a right of first refusal on the sale of Seller's leasehold interests in the Facility and the Site (i.e., its right to operate the Facility). Thus, the short answer is that with respect to the "Right of First Refusal," the Seller cannot bind other parties with ownership interests in the Facility or Site - but that is not relevant to Sec. 7.1, which addresses only Seller's interests in leasing and operating the Facility and Site.

It is important to contrast the Sec. 7.1 Right of First Refusal regarding only the Seller's interests, with the Purchase Option Agreement, as described in Sec. 7.2 and as set forth in Appendix B, *which affects the interests of all parties that now hold, or may come to hold, interests in the Site or the Facility*. There, PJPD Holdings, LLC as fee owner of the Site and Facility, and Laidlaw Berlin Biopower LLC as Site and Facility lessee, must bind themselves and their successors to a separate PSNH right to purchase the Facility and Site after 20 years of operation. As a condition to its obligation to purchase Products, PSNH must be satisfied that when executed, this purchase option will take priority over all leaseholds, mortgages or other interests in the Facility and Site, and that priority must be insured to pursuant to Sec. 4.1.4.

Together, PPA Sec. 7.1 provides PSNH with a Right of First Refusal to acquire any subsequent right to lease and operate the Facility over its first 20 years of operation (including the assumption of lease payment obligations), while the Purchase Option Agreement provides a first priority right to purchase the Facility and Site free of all other interests after 20 years - - even if the Right of First Refusal had earlier been exercised.