

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

Record Request HD-01

Dated: 01/25/2011
Q-RR-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.

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Dated: 01/25/2011

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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-12): Please answer the following questions regarding the PPA: (i) What is the intention of Article 24.2? (ii) Does Commission approval of the PPA preclude the Commission's authority to amend the PPA? (iii) Why is Article 24.1.2 in the agreement, what does it mean, and does it preclude further Commission review of the PPA? (iv) What is the purpose of Article 3.3?

Response:

This request includes four separate questions, and we take each in turn:

- (i) The PPA is a wholesale power sales agreement, and therefore falls under FERC's regulatory jurisdiction under the Federal Power Act. The Facility is too large to qualify for the regulatory exemptions from the Federal Power Act provided under PURPA at 18 C.F.R. 292.601, and will thus be required to file the PPA as a FERC tariff. However, PSNH has conditioned its obligations under the PPA on receipt "from the NHPUC [of] a final, non appealable decision acceptable to PSNH in its sole discretion, approving and allowing for full cost recovery of the rates, terms and conditions of this Agreement." (Article 4.1.3). Article 24.2 ties into Articles 24.1 and 24.3, by providing that both PSNH and Seller have waived any right to petition FERC or the Commission to change any term of the PPA, and as a result, any mandated changes to the PPA ordered by FERC or the Commission must be grounded in some legal authority *other than* the authority to respond to a petition or complaint filed by PSNH or Seller seeking a change to the PPA. The reference to the Commission here is merely precautionary, given (as explained above) the preemptive effect of FERC jurisdiction over wholesale power agreements under the Federal Power Act.
- (ii) As noted in the response to (i), above, the PPA is a wholesale power agreement subject to the regulatory jurisdiction of FERC pursuant to the Federal Power Act, which must be filed as a FERC tariff. The Commission's authority to amend the PPA would be governed by the Federal Power Act and FERC's regulations.
- (iii) Article 24.1.2 follows Article 24.1.1, which recites the intended application of the "*Mobile-Sierra Doctrine*" to the PPA. That doctrine generally provides that FERC will not consider requiring changes to a negotiated wholesale contract merely because one party to the contract petitions for contractual relief; rather, any required change must be grounded in a finding that some aspect of the contract has a material and detrimental effect on the larger public interest. This subsection simply provides that any ancillary agreements entered into by the same parties in connection with the PPA will be governed by the same standards.
- (iv) Article 3.3 requires that the Facility must be a "qualifying facility" under PURPA. The purpose of this requirement is to ensure that the Facility maintains the exemptions provided under FERC's PURPA regulations at 18 C.F.R. 292.602.

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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-13): What is PSNH's position on the need for approval from the Commission to transfer its Right of First Refusal under the PPA?

Response:

In PSNH's Petition seeking approval of the PPA, PSNH indicated it was seeking a decision approving and allowing for full cost recovery of the rates, terms and conditions of the PPA. PSNH anticipates that such approval would authorize PSNH to administer routine matters under the contract without further approval by the Commission. However, to the extent that there are material discretionary actions under the PPA (such as transfer of the Right of First Refusal), PSNH's actions regarding such discretionary actions would be subject to traditional Commission oversight to ensure the prudence of the Company's actions.

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Record Request HD-02

Dated: 01/26/2011

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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-14): Would approval of the PPA have any adverse effect on PSNH's debt rating?

Response:

According to Jeffrey R. Kotkin, Vice President - Investor Relations for Northeast Utilities, the size and nature of the Laidlaw PPA is not significant enough to have any adverse effect on PSNH's debt rating.

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**Dated: 01/26/2011
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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-15): Please provide the assumed rate impact for 2015, using a range of assumptions for market prices, wood prices and REC prices.

Response:

See the attached.

	Case 1 Low Market	Case 1a Low Market	Case 1b Low Market	Case 2 High Market	Case 2a High Market	Case 2b High Market
Facility Size (MW)	67.5	67.5	67.5	67.5	67.5	67.5
Capacity Factor (%)	87.5%	87.5%	87.5%	87.5%	87.5%	87.5%
Annual MWH	517,388	517,388	517,388	517,388	517,388	517,388
PPA Product Pricing Terms						
Wood Price (\$/ton)	\$27.00	\$30.00	\$27.00	\$27.00	\$30.00	\$27.00
PPA Energy Price (\$/MWH)	\$70.40	\$75.80	\$70.40	\$70.40	\$75.80	\$70.40
PPA REC Price (% of ACP)	80%	80%	80%	80%	80%	80%
2010 ACP (\$/REC)	\$60.93	\$60.93	\$60.93	\$60.93	\$60.93	\$60.93
Assumed CPI 2010 - 2015 (%)	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%
2015 ACP (\$/REC)	\$68.94	\$68.94	\$68.94	\$68.94	\$68.94	\$68.94
PPA REC Price (\$/REC)	\$55.15	\$55.15	\$55.15	\$55.15	\$55.15	\$55.15
PPA Capacity Price (\$/kw-mo)	\$4.25	\$4.25	\$4.25	\$4.25	\$4.25	\$4.25
PPA Capacity Price (\$/MWH)	\$6.65	\$6.65	\$6.65	\$6.65	\$6.65	\$6.65
Total PPA Price (\$/MWH)	\$132.20	\$137.60	\$132.20	\$132.20	\$137.60	\$132.20
Annual PPA Payments (\$000)	\$68,399	\$71,193	\$68,399	\$68,399	\$71,193	\$68,399
Avoided Costs of Products						
Energy Market (\$/MWH)	\$60.00	\$60.00	\$60.00	\$100.00	\$100.00	\$100.00
REC Market (% of ACP)	80%	80%	100%	80%	80%	100%
REC Market (\$/REC)	\$55.15	\$55.15	\$68.94	\$55.15	\$55.15	\$68.94
Capacity Market (\$/kw-mo)	\$2.86	\$2.86	\$2.86	\$2.86	\$2.86	\$2.86
Capacity Market (\$/MWH)	\$4.48	\$4.48	\$4.48	\$4.48	\$4.48	\$4.48
Total Avoided Costs (\$/MWH)	\$119.63	\$119.63	\$133.42	\$159.63	\$159.63	\$173.42
Annual Avoided Costs (\$000)	\$61,895	\$61,895	\$69,029	\$82,591	\$82,591	\$89,725
Energy Service Rate Impact						
Annual Rate Impact (\$000) = PPA Payments minus Avoided Costs (\$000)	\$6,503	\$9,297	(\$630)	(\$14,192)	(\$11,398)	(\$21,326)
Delivery Sales Forecast (MWH)	8,064,644	8,064,645	8,064,646	8,064,644	8,064,645	8,064,646
Migration Assumption (%)	31%	31%	31%	31%	31%	31%
Energy Service Sales (MWH)	5,564,604	5,564,605	5,564,606	5,564,604	5,564,605	5,564,606
Rate Impact (cents per KWH)	0.12	0.17	(0.01)	(0.26)	(0.20)	(0.38)
Monthly Bill Impact (Residential, 750 KWH) (\$/mo)	\$0.88	\$1.25	(\$0.08)	(\$1.91)	(\$1.54)	(\$2.87)