

STATE OF NEW HAMPSHIRE  
BEFORE THE  
PUBLIC UTILITIES COMMISSION

Public Service Company of New Hampshire  
Petition for Approval of PPA with Laidlaw Berlin BioPower, LLC

Docket No. DE 10-195

**LIDLAW BERLIN BIOPOWER, LLC'S NOTICE OF WITHDRAWAL**

NOW COMES Laidlaw Berlin BioPower, LLC ("LBB") and provides notice to the Public Utilities Commission (the "Commission") of its withdrawal from this proceeding.

1. LBB, as the counterparty to the Power Purchase Agreement ("PPA") that is the subject of this docket, intervened for two reasons: (1) to provide assistance to the Commission in the assessment of the PPA; and (2) to advocate for an expedited schedule so that the City of Berlin, and others, could realize the economic benefits associated with the project's New Market Tax Credits.

2. LBB voluntarily agreed to participate as a full party intervenor, even though, to the best of its knowledge, none of the counterparties to PPAs in prior, similar proceedings under RSA Chapter 362-F participated in such a manner in those matters. *See Public Service of New Hampshire Petition for Approval of a Power Purchase Agreement and Renewable Energy Certificate with Lempster Wind*, Docket No. DE 08-077; *Public Service of New Hampshire Petition for Approval of Power Purchase Agreements with Pinetree Power, Inc. and Pinetree-Power-Tamworth, Inc.*, Docket No. DE 07-125. Plainly, the counterparty to such a PPA is not a necessary party.

3. Second, contrary to Rule Puc 203.09(b), LBB was informed during the prehearing conference that "parties" (as defined by Rule Puc 102.10) granted intervenor status who choose not to submit testimony would not be subject to discovery. Notwithstanding this information,

LBB voluntarily subjected itself to such discovery to assist with the Commission's consideration of the matter at hand. This voluntary agreement to respond to discovery was based on the expectation that such discovery would be "within the bounds of what is reasonable under the circumstances." *See* September 29, 2010 Prehearing Transcript at 111.

4. The staff has served three sets of data requests on LBB. LBB has thus far provided timely responses to the first two sets and, it believes, has been cooperative and provided the staff with helpful information.

5. The Wood IPPs and Concord Steam have also served data requests on LBB. These competitor-interveners have not extended to LBB the same treatment that they have demanded for themselves in similar circumstances.<sup>1</sup> Those data requests, almost in their entirety, seek irrelevant information and material that is confidential.

6. On October 27, 2010 the Commission issued its ruling on LBB's Motion for Confidential Treatment of Its Pro Forma. The Commission ruled that LBB's pro forma will remain confidential and not be disclosed to these interveners. In denying the interveners access to the pro forma, the Commission noted that "the information regards the financial interests of a private, non-regulated corporation which is not the applicant in this proceeding" and "[b]ackground documents used by the non-regulated party in the negotiation are clearly of secondary interest." Laidlaw believes that all of the other documents these interveners seek from Laidlaw fall into this category. Nevertheless, for the reasons expressed herein, asking the Commission to deal with the extensive discovery dispute the interveners intend to pursue on a

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<sup>1</sup> PSNH best captured what seems to be happening here: these competitors "needed access to their competitor's confidential information in order to be able to impede that competition." *PSNH Motion for Rehearing* at 4. LBB joins PSNH in questioning how access to such information is consistent with RSA 374-F. *Id.* at 4, footnote 14.

host of other similar “background documents” would cause delay, and be a waste of time and resources.

7. These other interveners knew full well that LBB would have to object to the type of overbroad, inappropriate discovery they served on LBB. Certainly, these interveners would react the same way if the situation were reversed.<sup>2</sup> The inescapable conclusion is that these requests were designed to elicit from LBB the precise responses LBB provided and, by doing so, force a delay in these proceedings thereby creating a situation intended to disrupt the orderly and prompt conduct of the proceedings.

8. On October 27, 2010, the Wood IPPs and Concord Steam provided notice to the Commission of their intent to file several “lengthy” Motions to Compel responses to their inappropriate discovery requests. In that letter they state “Laidlaw has unilaterally rendered the current hearing schedule unworkable.” Nothing could be further from the truth. These parties, not Laidlaw, have jeopardized the schedule.

9. It is readily apparent that LBB’s presence in these proceedings, rather than providing assistance and furthering on orderly process, has instead become a significant distraction. There is no reason for the Commission to expend considerable resources refereeing the unfounded and extensive discovery battle that these interveners have commenced. This distraction will serve no purpose other than to delay this schedule to the detriment of the City of Berlin and the many other entities in the North Country who are counting on the economic benefits this project will deliver.

10. The conduct of these interveners has forced LBB to conclude that it is in the best interests of this docket, the City of Berlin, and all those entities that stand to benefit from the

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<sup>2</sup> See *PSNH Motion for Rehearing* at 10-12.

near-term development of a significant new source of biomass-fired renewable generation that LBB withdraw as a party intervenor in this proceeding. The additional value that LBB may be able to provide through its assistance to the Commission is more than offset by the protracted, irrelevant discovery battle that looms ahead, and the inevitable disruption that such unnecessary litigiousness will cause to the schedule and the economic needs of the State. LBB believes that if it withdraws, the Commission can resume its focus on “the proper purpose of the proceeding ... whether the result of the negotiation between PSNH and Laidlaw, that is the proposed PPA for energy and RECs, is in the public interest.” October 27, 2010 Commission Order.

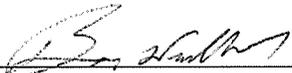
Respectfully submitted,

Laidlaw Berlin BioPower, LLC

By Its Attorneys,

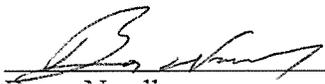
McLANE, GRAF, RAULERSON & MIDDLETON,  
PROFESSIONAL ASSOCIATION

Date: October 28, 2010

By:   
\_\_\_\_\_  
Barry Needleman  
Eleven South Main Street  
Concord, NH 03301  
Telephone (603) 226-0400

**Certificate of Service**

I hereby certify that on this 28th day of October, 2010, a copy of the foregoing Notice of Withdrawal has been forwarded to the service list in this matter.

  
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Barry Needleman