

THE STATE OF NEW HAMPSHIRE
before the
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

Petition for Approval of Power Purchase Agreement Between
Public Service Co. of New Hampshire and Laidlaw Berlin BioPower, LLC

Docket No. DE 10-195

Closing Statement of Public Service Company of New Hampshire

In 2007, the General Court enacted the state's "Electric Renewable Portfolio Standard" ("RPS"), RSA Chapter 362-F. The purpose of the RPS is, *inter alia*, to "provide fuel diversity to the state... through use of local renewable fuels;" to "stabilize future energy costs by reducing exposure to rising and volatile fossil fuel prices;" "to keep energy and investment dollars in the state to benefit our own economy;" and, "to stimulate investment in low emission renewable energy generation technologies in ... in particular, New Hampshire... ." The Legislature created a series of minimum escalating annual requirements beginning in 2008 and increasing until leveling in 2025, mandating that the electricity sold to retail customers within the state be composed of certain percentages of various classes of renewable energy. All Load Serving Entities must comply with this RPS requirement. In 2025, the RPS requires 23.8% of the energy sold to be from designated renewable sources, with 16% from Class I sources.

To comply with the RPS law, PSNH negotiated a Power Purchase Agreement ("PPA") with Laidlaw Berlin BioPower, LLC. That PPA was executed on June 8, 2010, following detailed arm's length negotiations. That agreement would provide PSNH with energy products, including Class I RECs, necessary to comply with the RPS law. On July 26, 2010, PSNH petitioned the Commission for approval of the PPA pursuant to RSA 362-F:9. PSNH submits that the PPA it brought to the Commission for approval precisely meets the intent and purpose of the RPS law.

In this proceeding the parties have presented myriad analyses, benchmarks, forecasts, and projections regarding how the PPA may fare against the marketplace over its 20 year term. Staff Ex. 14 shows that, depending upon which set of numbers is used, the results of those predictions vary significantly, from a \$300 M net benefit to customers to a \$300 M detriment. All the parties do agree on one thing - - no one can predict the future. However, the PPA protects customers against the potential for this wide range of possible outcomes by having a fixed base energy charge, an adjustment for fuel based on an index that is within the Commission's regulatory jurisdiction, and a means to capture any accumulated above market energy costs and ultimately return that value to customers, while also providing that if accumulated prices are below market customers will receive the benefit of the below market prices.

What we do know is that the legislature has mandated that LSEs include certain percentages of renewable power in their portfolio. We know that from 2010 through 2025, the legal requirement for the inclusion of Class I resources increases 1600% - - and load growth will push that need even higher. We also know that virtually nothing is being built to meet this increasing demand. ISO-NE predicts that even if 40% of the projects in the ISO queue are developed, the region's need for RECs will outstrip supply by 2013. There is no evidence that disputes this ISO prediction. Even Synapse relied on the ISO for this issue. When demand surpasses supply, as we are clearly heading toward, the price of compliance in the marketplace will escalate until it hits the Alternative Compliance Payment ("ACP") limit.

The PPA allows PSNH to buy RECs at a fraction of the ACP price. If one compares the ISO-NE chart (Attachment PSNH Rebuttal 6) with the PPA's REC pricing - - as time goes on, the gap between supply of and demand for RECs widens; but as time goes on, the cost of RECs to PSNH under the PPA drops from 80% of ACP to 75% to 70% and finally to 50% of ACP. In testimony before the Massachusetts DPU related to a renewable energy contract entered into by NSTAR, NSTAR's James Daly noted, "Forecasts of supply and demand for RECs vary; however, as a threshold issue, should the market be in shortage due to the inability to supply enough RECs, this contract will serve as a hedge against such exposure thereby reducing ratepayer costs versus paying the ACP. By this measure also the contract is cost effective." The Laidlaw PPA does that very thing.

There is also little dispute that the cost of wood fuel has demonstrated less volatility than market energy prices. Attachment PSNH Rebuttal 2, PSNH Exhibit 19 and Staff Exhibit 16, all using different sources for the cost of wood, visually demonstrate this fact. La Capra Associates has noted that one of the principal purposes of an RPS law is "Hedging against price volatility or increasing fuel costs." In fact, the New Hampshire RPS at RSA 362-F:1 includes as one of the law's purposes, "the potential to lower and stabilize future energy costs by reducing exposure to rising and volatile fossil fuel prices." The PPA fulfills this legislative purpose.

The testimonies submitted by OCA and the Staff Advocate have little to say about the cost of capacity under the PPA. Mr. McCluskey's Exhibit GRM-14 shows the PPA appears to present a nominal savings of over \$40 M in capacity value. He criticized that figure based on Levitan's use of an inflation factor adjustment in the later years; however, both Synapse and Mr. McCluskey himself utilized that same methodology with impunity.

OCA's analysis of the REC issue utilized an analysis where the price of RECs remains at 30% of the ACP for the term of the PPA. Even Mr. Traum conceded, in response to a data request, that it was not OCA's opinion and testimony that REC prices will be 30% of the ACP for the term of the

proposed Laidlaw contract. It would be patently unreasonable to rely upon the OCA's analyses, given Mr. Traum's response to that question.

The Staff Advocate's testimony was tainted by myriad credibility issues. The Staff Advocate testified, "I've never even heard of Ventyx before this, the hearings." Similarly, despite his repeated citations to the Massachusetts and New York renewable programs, he claimed unfamiliarity with the Connecticut Project 150 statutory renewable RFP process. The Staff Advocate criticized PSNH's witnesses for not reading the Synapse report. Yet, that very same report, on more than a half dozen occasions, references Ventyx (which he claimed he had never heard of) and, in more than a half dozen other places, references Connecticut's Project 150 (which he claimed he was unfamiliar with). He accused PSNH of omitting interest on the Cumulative Reduction fund to benefit itself over customers, and testified that cost minimization was not high on the Company's list of objectives for the PPA. He testified that the PPA failed to comply with the RPS law...but then admitted he was wrong. When asked about his testimony where he stated PSNH "will pay" \$1.6 B for the Laidlaw products, he ultimately conceded that he really does not know what PSNH will pay. Upon cross examination he continued to hold to his belief that there is a concept of "Lost RECs" caused by line losses, despite the express language of the statute that says a REC represents "the record that identifies and represents each megawatt-hour generated by a renewable energy generating source under RSA 362-F:6." Clearly, a REC created by a generator does not degrade with distance - a concept that would play havoc with the NEPOOL Generation Information System (GIS) that tracks RECs. And, despite his testimony in Docket No. DE 09-137 that, "Staff assumed that the price of RECs would rise from the existing level at the rate that the ACP rose," in this proceeding, his testimony included steadily decreasing REC pricing. Such inaccuracies and inconsistencies make the Staff Advocate's testimony unreliable and of little merit.

Staff and OCA both advocate use of a competitive solicitation process as superior to the bilateral negotiation process used by PSNH to develop the PPA. Connecticut's Project 150 process is just such a competitive process - and it has been an utter failure. In five years, nothing has been built, because nothing can get financed. The only investments being made in Connecticut are in legal fees. That is not what the New Hampshire legislature intended. Even NSTAR's lauded competitive solicitation produced a result which, "The Company [NSTAR] acknowledges...provides power at a price higher than its consultant's forecast of market prices for conventional energy and RECs."

We have had many red herrings thrown into this proceeding. Wood will not be available; there are prisons to provide jobs in Berlin; the Coös loop cannot handle the power; PSNH is using the PPA as a Trojan horse to be able to own more generating assets in 2034; used-and-useful; anti-CWIP.

The wood and transmission issues were reviewed by the Site Evaluation Committee and need not be rehashed here. The prison jobs have no relevance to the PPA. The Trojan horse analogy - - that is merely preposterous. With respect to used-and-useful and anti-CWIP - every penny paid by PSNH would be pursuant to a FERC tariff; not one penny will be put into PSNH's rate base throughout the term of the PPA. What, if anything, happens in 2034 would be subject to whatever regulatory paradigm exists at the time.

The Staff Advocate testified that he was not recommending disapproval of the PPA - - just that it needed to be substantially altered before receiving approval. He outlined several recommendations on how the PPA must be changed. Unfortunately, the changes he recommends would produce a deal that will not be financeable and a project that will not be built. Even the Staff Advocate testified that PPA prices must be reflective of what is necessary for the facility to receive financing. However, he admitted that he had no experience regarding the financing of a generation project. It is not surprising, therefore, that his recommendations are unobtainable if the project is to be financeable.

The evidence demonstrates that receipt of financing for a generation project is not an easy task. Recall Mr. Daly's testimony in the NSTAR proceeding that "Any delay in approving the contract would jeopardize the project's ability to qualify for the tax credit resulting in either the inability to finance the project or increased prices to ratepayers if the project had to rebid in a later RFP." Also recall the experience of Connecticut in its Project 150 RFP process. Not one project is being built; numerous winning bidders are seeking contract changes due to their inability to finance under their PPAs.

PSNH insisted on finding a solution to untie the Gordian knot caused by the necessity to have a financeable PPA, while also protecting customers from unduly enriching the developer. That solution was the Cumulative Reduction fund ("CRF") mechanism in the PPA. The CRF is unique and required extensive negotiating and crafting. PSNH mandated that customers be protected by having a recorded real property purchase option interest and a lien on the facility that has priority over every other creditor. The value of the CRF is further protected by a title insurance policy. This innovative solution to the financing vs. customer protection issue was characterized by the Staff Advocate as insufficient. However, Mr. Sansoucy testified that the fair market value of the facility in 20 years may be upwards of \$130 M.

One issue raised during the proceeding was the lack of interest applied to the balance of the CRF. But, now that such accrual of interest has been offered, there is a distinct lack of interest from the Staff Advocate. When asked why his interest in interest had waned, his response was that the facility would have little value at the end of the PPA. But, when probed on the basis for his

testimony regarding the future lack of value of the plant, the Staff Advocate admitted that although he was aware that the existing wood IPP facilities had been sold over the course time, he did not know who owned them and had no idea what they sold for. He provided no basis whatsoever for his testimony that the Laidlaw facility would have little value in the future except to say that the value would be influenced by future events.

Perhaps the biggest problem with the Staff Advocate's testimony was his mathematical error in computing the cost of RECs. He agreed that his REC pricing was based on data from the Synapse report. He agreed that the Synapse REC model was based on the REC premium needed to meet the cost-of-new-entry (CONE) for a new facility. He agreed that if the energy price drops, the CONE does not. But, when he adjusted the Synapse REC numbers to account for his 30% lower energy price, he failed to appropriately increase the REC price as necessary to make up the difference to reach the CONE. During cross-examination, the Staff Advocate waffled and equivocated regarding this error. It required direct questioning from Commissioner Below for an almost-direct response that maybe he had made a mistake. The arithmetic performed during cross-examination on Exhibit GRM-13 resulted in an "Adjusted Synapse Market REC Projection" for 2014 of \$54.55 -- a price higher than the PPA's 2014 REC price of \$53.80. That mathematical error affects every REC number and every REC conclusion in the Staff Advocate's testimony. Since the Staff Advocate testified that, "The major issues, in my opinion, are the excessive REC prices and the requirement to purchase more RECs than is actually needed," an error in his analyses of REC pricing casts a cloud on the entirety of the Staff Advocate's recommendations. Moreover, as Mr. Frantz's testimony relied solely on the Staff Advocate's faulty analyses, the opinions in his testimony similarly cannot be relied upon.

Mr. Sansoucy outlined the numerous benefits of the LBB facility. There is one in particular we wanted to reiterate, the benefits of siting this facility on a contaminated brownfield site. Turning "brown to green" is in the best interest of all residents of New Hampshire (*see*, RSA Chapter 147-F), even more so when you can turn "green dollars" into jobs and opportunities at the same time.

Dr. Shapiro's testimony demonstrates that the Laidlaw facility will provide significant economic benefits to an economically depressed area of the state by supporting 470 average annual New Hampshire jobs during the construction of the Project, and once operational, 40 direct jobs at the plant, and about 200 additional indirect and induced jobs, many of which will be in the logging and related industries. And, that does not include the additional 65 jobs announced recently for the related business that has announced an intention to locate on the site, and their additional indirect and induced jobs.

The Commission must not forget that the RPS is a public policy law, and the importance this docket has to implementing that public policy. This quotation perhaps sums up this mandate best: *“The proposed Laidlaw biomass power plant could result in significant benefits to the economy of Berlin and New Hampshire's North Country. This investment will create construction jobs, operating jobs, support New Hampshire's timber industry, expand our state's renewable energy supply, and contribute significantly to the tax base of the City of Berlin. I recognize and support the important benefits this project represents.”* That quotation did not come from Dr. Shapiro. Nor did it come from Gary Long. That statement of support came from Governor John Lynch in his January 11, 2011 letter filed in this proceeding.

The legislative purpose and public interest findings of the RPS law are clear. The PPA submitted for approval by PSNH implements those purposes and satisfies the RPS law's public interest requirements. When considering the merits of the PPA, consider the concerns of the Massachusetts Department of Energy Resources: “DOER's predominant concern is that the multitude of potential intervenors may compromise the legislative objective of an expeditious process for the approval of long-term contracts to facilitate the financing of renewable energy generation.”

PSNH implores the Commission not to let the process in New Hampshire be compromised. Don't create a situation where New Hampshire's RPS dollars are being sent out of state. Don't block development of a significant in-state renewable generator that will ensure PSNH's ability to comply with the RPS law at prices that are fractions of the ACP. Don't throw away millions of dollars in federal grants that can benefit the North Country. Don't take away the hundreds of jobs that the Laidlaw Biomass facility will provide to the citizens of Berlin, Coös County, and the state of New Hampshire. As Executive Councilor Burton noted in his January 27, 2011, letter to the Commission, “WE NEED THOSE JOBS.”

The PPA PSNH has presented is a good deal, a financeable deal, a deal that took extensive negotiations, a deal that is innovative and provides unprecedented protections for customers, a deal that will result in keeping energy and investment dollars in the state to benefit our own economy, and create hundreds of jobs - - just as the Legislature intended. As stated by Mr. Long in his testimony, this deal is the best one available for meeting the state's RPS. There will likely not be another one if this PPA is not approved. The Commission must therefore decide whether it will implement the state's policy objectives based upon the significant merits of this PPA and not on long-term forecasts which all parties agree will ultimately be incorrect.

PSNH is grateful to the Commission for dedicating 6 days of hearings to consider the Petition, and we ask that the Commission expeditiously deliberate and grant its approval of the PPA.

Respectfully submitted this 14th day of February, 2011.

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CERTIFICATE OF SERVICE

I hereby certify that on February 14, 2011, I served an electronic copy of this filing with each person identified on the Commission's service list for this docket pursuant to Rule Puc 203.02(a).



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