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A Northeast Utilities Company

**Robert A. Bersak**  
Assistant Secretary and  
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June 6, 2011

Ms. Debra A. Howland  
Executive Director and Secretary  
New Hampshire Public Utilities Commission  
21 S. Fruit Street, Suite 10  
Concord, New Hampshire 03301



**Re: *Docket No. DE 10-195, "Petition for Approval of Power Purchase Agreement between Public Service Company of New Hampshire and Laidlaw Berlin BioPower, LLC"***

Dear Secretary Howland:

On April 18, 2011, the Commission issued Order No. 25,213, "Order Granting Conditional Approval," (the "Order") in Docket No. DE 10-195. In the Order, the Commission ruled "that, the PPA is approved on the condition that PSNH files a revised PPA complying with the terms set forth herein within 30 days of this order." On May 18, 2011, PSNH filed such an "Amended and Restated Power Purchase Agreement" complying with the terms set forth in the Order.

By letter dated June 2, 2011, the Office of the Consumer Advocate ("OCA") submitted comments regarding compliance of the Amended and Restated PPA with the Order. PSNH disagrees with the concerns raised by the OCA's letter, and wishes to provide its bases for such disagreement.

OCA's first comment relates to the condition contained in the Order, "to constrain the potential impact on ratepayers, we condition approval of the PPA on an annual output purchase obligation of 500,000 MWh." In the Amended and Restated PPA, PSNH's obligation to pay contract rates for energy is in fact limited to an annual purchase obligation of 500,000 MWh, thus constraining the potential impact on ratepayers as required by the Order. OCA complains that the implementation of this condition in the Amended and Restated PPA "is not consistent with the Commission's Order." In our May 18, 2011 letter accompanying the filing of the Amended and Restated PPA (in the bullet describing "New Section 6.1.3., Energy,") PSNH described the reasoning and methodology employed to fulfill the Commission's concerns and the Order's condition:

- o Energy: PPA pricing will apply to no more than 500,000 MWh of energy per year. Any additional energy produced by the Facility will be priced at the “Average LMP Price,” thus making PSNH’s customers indifferent to such purchases. The design of this provision is intended to ensure that both the Facility owners and PSNH’s customers are treated fairly and equitably under the PPA, with no possibility of “gaming” purchases or plant operations to favor one party over the other. For example, if the contract language specified that purchases by PSNH ceased entirely once the 500,000 MWh sales cap was reached, the developer would have the theoretical opportunity to adjust the timing of the Facility’s In-Service Date to just after the winter or summer peak periods. That would maximize energy sales to PSNH during lower cost spring and fall periods to the detriment of PSNH’s customers and allow the developer to benefit by selling any generation in excess of the 500,000 MWh cap to the market at the end of an “Operating Year” which would occur during a high cost winter or summer period.

We believe that previously-provided explanation adequately addresses the OCA’s first concern.<sup>1</sup>

OCA’s next concern appears to involve the issue of what happens to any “excess cumulative reduction” which may exist after the Term of the contract due to potential above-market pricing during year 20 of the contract. OCA notes that the Amended and Restated PPA expressly states, “If upon expiration of the Term PSNH does not purchase the Facility, Seller shall reimburse PSNH the value of any Excess Cumulative Reduction.” OCA questions what happens to any such Excess Cumulative Reduction if PSNH does purchase the Facility. The Amended and Restated PPA as submitted adequately deals with this latter situation. Any “Excess Cumulative Reduction” amount that may accrue during the last Operating Year of the contract’s Term is included as part of the overall “Cumulative Reduction,” as defined in Section 6.1.4(a), which would be used to adjust the price of any Facility purchase option by PSNH pursuant to Article 7 of the contract, if exercised. Refer also to Section 6.1.4(c), which specifically notes that the energy credit mechanism created therein only applies to any Excess Cumulative Reduction “at the end of any Operating Year other than the last Operating Year during the Term....” Thus, the issue raised by OCA is in fact addressed by the Amended and Restated PPA.

The third concern raised by OCA asks “why is there no security for the excess cumulative reduction?” OCA’s concern is whether there will be sufficient funds to ensure payment of the Excess Cumulative Reduction without some form of security. The Order did not require the

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<sup>1</sup> By footnote, OCA also claims that the Amended and Restated PPA “seems to also require that ratepayers carry the costs of any overpayment of energy over 500,000 MWh for a year.” That observation is incorrect. Even with a nominal capacity of 75 MW, it is questionable whether the Facility would generate more than the 500,000 MWh cap during an Operating Year. If it did, even with a capacity factor of 90%, that cap would not be exceeded until perhaps the eleventh month of the Operating Year. Under Section 6.1.3 of the contract, any over- or underage caused by such exceedance would be dealt with during the first three months of the next Operating Year. Thus, the carrying period, if any, would be approximately two months, and the amounts in question would be minimal. OCA’s footnote suggests “the excess energy could be determined hourly and purchased using hourly market rates, or determined hourly and purchased using a monthly market average to make an adjustment on a monthly invoice.” That would not be possible, as it would not be known until very late in the Operating Year whether any excess generation would be produced. The contract uses an Average LMP Price for any such excess generation to avoid gaming, and to ensure fair treatment for both retail customers and the Facility owner.

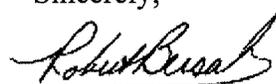
revised PPA to include any such security as requested in OCA's letter. As the time period set by RSA 541:3 for rehearing of the Order has expired, OCA's request for a change in the Order is untimely. Notwithstanding that legal impediment, PSNH believes that the OCA's concern is unfounded. For every year except for the last Operating Year during the contract Term, the value of the Facility's energy generated during the following year provides security for crediting any Excess Cumulative Reduction to customers. This precisely implements the Order's condition that, "To the extent that the accumulated account exceeds \$100 million in any year, the overage will be credited against the energy price paid in the following year." As there is no "energy price paid" after the end of the contract term, any Excess Cumulative Reduction accruing during the contract's twentieth operating year would be treated in the manner discussed above.

Finally, OCA questions whether the Amended and Restated PPA was adequately "revised to add a provision that expressly recognizes the Commission's retention of such traditional regulatory authority in such circumstances." The "circumstances" described in the Order refer to the Order's commentary that "PSNH has assured us that to the extent there are material discretionary actions to be taken by PSNH in performing under the PPA, such as PSNH's exercise or transfer of the POA, transfer of the CRF, transfer of the Right of First Refusal, or incurrence of expenditures under Article 8 of the PPA, PSNH's actions regarding such discretionary actions would remain subject to traditional Commission oversight to ensure the prudence of the Company's actions." The Amended and Restated PPA, at Section 24.1(ii) expressly provides that the contract does not prevent "PSNH from seeking NHPUC review and/or approval of any material discretionary actions to be taken by PSNH in performing under this Agreement, such as PSNH's exercise or transfer of the Purchase Option Agreement, transfer of the Cumulative Reduction, transfer of the Right of First Refusal, or incurrence of expenditures under Article 8 hereof." As: (i) the Order notes the Commission's retention of authority of regulatory authority over the circumstances listed in Section 24.1(ii); the contract expressly allows PSNH to seek such NHPUC review and/or approvals; and, (iii) PSNH is a public utility which must comply with the Commission's orders -- the Amended and Restated PPA adequately implements the condition contained in the Order.

Hence, PSNH is confident that the concerns of the OCA are addressed by the Amended and Restated PPA as filed, and that the revised contract indeed complies with all of the conditions set forth by the Commission in its April 18, 2011 Order.

If you have any questions, please let me know.

Sincerely,



Robert A. Bersak

Assistant Secretary and  
Assistant General Counsel

cc: Service List