

THE STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION

DE 10-195

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Petition for Approval of Power Purchase Agreement with
Laidlaw Berlin BioPower, LLC

MOTION TO STRIKE

December 22, 2010

Pursuant to N.H. Code of Admin Rule Puc 203.07, Public Service Company of New Hampshire (“PSNH”) hereby moves to strike the prefiled testimony submitted by Concord Steam Corporation of Mark E. Saltsman and the joint testimony of Robert J. Berti and James C. Dammann. The subject of the testimony in question is the impact of the Laidlaw Power Purchase Agreement on the region’s wood supply, and hence, wood cost. The basis for this Motion is that the identified prefiled testimony is outside the scope of this proceeding, and deals with a matter that was considered by the New Hampshire Site Evaluation Committee during its deliberation in its Docket No. 2009-2, “Application of Laidlaw Berlin BioPower for a Certificate of Site and Facility for a 70 MW Biomass Fueled Energy Facility in Berlin, Coos County, New Hampshire.”

In support of this Motion, PSNH states:

BACKGROUND

1. On July 26, 2010, PSNH petitioned the Commission pursuant to RSA 362-F:9 for approval of a power purchase agreement (“PPA”) entered into with Laidlaw Berlin BioPower, LLC
2. RSA 362-F:9 calls for the Commission to determine whether the PPA is in the public interest. RSA 362-F:9, II provides:

II. In determining the public interest, the commission shall find that the proposal is, on balance, substantially consistent with the following factors:

(a) The efficient and cost-effective realization of the purposes and goals of this chapter;

(b) The restructuring policy principles of RSA 374-F:3;

(c) The extent to which such multi-year procurements are likely to create a reasonable mix of resources, in combination with the company's overall energy and capacity portfolio, in light of the energy policy set forth in RSA 378:37 and either the distribution company's integrated least cost resource plan pursuant to RSA 378:37-41, if applicable, or a portfolio management strategy for default service procurement that balances potential benefits and risks to default service customers;

(d) The extent to which such procurement is conducted in a manner that is administratively efficient and promotes market-driven competitive innovations and solutions; and

(e) Economic development and environmental benefits for New Hampshire.

3. The testimony of Mark E. Saltsman and the joint testimony of Robert J. Berti and James C. Dammann (collectively, the "Wood Supply Testimony") relates to the impact that the PPA would have on the region's wood supply, and hence on the cost of wood. Mr. Saltsman identifies the subject of his testimony as follows:

I will discuss the PPA's impact and harm to the wood-market in which Concord Steam competes for its wood supply; the likelihood that the creation of such a massive wood fired facility will create a monopolies in both the wood fuel market and the Class I bio-mass REC market in violation of the principles of restructuring set forth in RSA 374-F:1,I&II and the directives of Part II Article 83 of the New Hampshire Constitution.

4. Mssrs. Berti and Dammann do not provide a concise description of the subject of their testimony. However, a review of that testimony reveals that it deals exclusively with the impact they foresee Laidlaw's Berlin facility would have on the region's wood market.
5. On September 29, 2010, the Commission held a prehearing conference in this docket. During that proceeding, the Commission considered in part the proper scope of this proceeding.

6. At one point during the prehearing conference, Commissioner Ignatius asked counsel for the Wood-Fired IPPs, “I wanted to ask you about something you said a moment ago, that you were concerned about the size of the plant being 70 megawatts, and that the radius around which it would draw wood was too great. Aren't those issues that are within the Site Evaluation Committee proceeding, on whether or not the plant itself is in the public interest?” Transcript, p. 46. (It should be noted that Commissioner Ignatius participated in the Site Evaluation Committee proceeding as a member of the subcommittee tasked to hear that matter. Transcript, p. 96-97.)
7. Later in the prehearing conference, counsel for PSNH asked, “There was a lot of discussion this morning about "wood". Is wood in or is wood out? Was wood dealt with at the Site Evaluation Committee or is it going to be a subject here?” Transcript, p. 112. The Commission responded “that we'll have to wait and see what the discovery looks like before we can formulate a response on some of those issues.” Transcript, p. 113.
8. The purpose of the Site Evaluation Committee includes, *inter alia*, is to review “the selection of sites for energy facilities, including the routing of high voltage transmission lines and energy transmission pipelines, [that] will have a significant impact upon the welfare of the population, the location and growth of industry, the overall economic growth of the state, the environment of the state, and the use of natural resources.” RSA 162-H:1.
9. The Site Evaluation Committee reviewed the planned Laidlaw facility in its Docket No. 2009-2, “Application of Laidlaw Berlin BioPower for a Certificate of Site and Facility for a 70 MW Biomass Fueled Energy Facility in Berlin, Coos County, New Hampshire.” The Site Evaluation Committee issued its “Decision Granting Certificate of Site and Facility with Conditions” (the “Decision”) to Laidlaw on November 8, 2010. In that Decision, the Site Evaluation Committee included detailed considerations of the potential impact of the Laidlaw facility on the region’s wood supply.

- a. For example, the Decision notes, “The Facility’s effect on the economy and the forestry of the region was vigorously disputed by the parties in terms of the ‘orderly development of the region’ as that phrase is contained in RSA 162-H:16, IV (b).” Decision, p. 56.
 - b. The Decision further states, “As will be discussed in detail below, the Subcommittee does not find that there is insufficient biomass in the region for all facilities. It is impossible to predict, with any accuracy, how much biomass will be on the market, the price of biomass, and the ability or inability of other facilities to purchase such biomass. In addition, the Subcommittee notes that the business development of other facilities is outside of the Subcommittee’s control. Numerous economic factors may cause the prosperity or demise of other facilities. Therefore, the Subcommittee does not find that the construction of the Facility will unduly interfere with the orderly development of the region, particularly given that the business operations of other facilities are subject to market forces that are outside of the regulatory jurisdiction of this Subcommittee.” Decision at 61-62.
 - c. Further, “An issue that has been the subject of much debate in this docket is whether the siting, construction and operation of the proposed Facility will interfere with the orderly development of the region by disrupting either the local forestry industry or the existing small power producing industry in Coos County.” Decision at 62.
 - d. And, finally, “It appears that there is an adequate supply of biomass in the region to fuel the proposed Facility. Thus, the Subcommittee finds that the issuance of a Certificate to the Applicant will not unduly interfere with the forest industry or the renewable energy industry in the region.” Decision at 65.
10. On that same date (November 8, 2010), the Site Evaluation Committee issued its “Order and Certificate of Site and Facility with Conditions” (the “Order”).

- a. That Order states, “the Subcommittee has considered available alternatives and fully reviewed the environmental impact of the Site and all other relevant factors bearing on whether the objectives of R.S.A. 162- H would be best served by the issuance of a Certificate of Site and Facility.” Order at 2.
 - b. “[T]he Subcommittee finds that, subject to the conditions herein, the Project will not unduly interfere with the orderly development of the region with due consideration having been given to the views of municipal and regional planning commissions and municipal governing bodies.” *Id.*
 - c. That Order contains a condition that expressly deals with wood supply issues, “Further Ordered that, the Applicant shall not commence construction until such time that it has filed, with the Subcommittee, a signed Fuel Supply Agreement with Cousineau Forest Products materially consistent with Exs, Laidlaw 62, 62 and 76A CONFIDENTIAL.” Order at 4.
11. The Commission has recognized that certain issues are within the jurisdiction of the Site Evaluation Committee, and would not be part of a proceeding before the Commission. *Re International Generation and Transmission Company, Inc.*, 67 NH PUC 478 (1982).
12. The issues surrounding the region’s wood supply and related matters have been fully heard, considered, and ruled upon by the Site Evaluation Committee. Concord Steam Corporation had the opportunity to seek intervenor status in that proceeding, if it so desired. PSNH understands that Mr. Saltsman was present for much of that proceeding. Indeed, both Mr. Saltsman and Mr. Berti personally appeared at the Site Evaluation Committee. Decision at 55. Mr. Berti also provided self-styled written “testimony” to the Site Evaluation Committee dated September 9, 2010. That testimony, a copy of which is attached hereto as Attachment 1, deals with the same issues as his joint testimony filed with the Commission in this proceeding.
13. PSNH understands that the Site Evaluation Committee literally spent days evaluating wood supply issues. Concord Steam Corporation now asks this Commission to

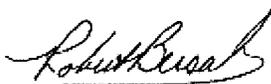
undertake a colossal duplication of administrative resources by rereading all that same ground. Such an exercise is not only an intrusion into the jurisdiction of the Site Evaluation Committee, but it is not even a component of the public interest assessment at issue here. Rather, this is purely a question of the hypothetical competitive effect that the Laidlaw project might have on Concord Steam. Such competitive concerns have no more place here than they had at the Site Evaluation Committee. *See* at 61-62, 67.

14. Therefore, PSNH contends that the issues contained in the Wood Supply Testimony, having already been heard, considered, and ruled upon by the Site Evaluation Committee, should not be heard again by the Commission in this proceeding.

WHEREFORE, PSNH moves to strike the pre-filed testimony of Mr. Mark E. Saltsman and the joint testimony of Msrs. Robert J. Berti and James C. Dammann filed on behalf of Concord Steam Corporation.

Respectfully submitted this 22nd day of December, 2010.

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

By:  _____

Robert A. Bersak
Assistant Secretary and Assistant General Counsel
Public Service Company of New Hampshire
780 N. Commercial Street
Post Office Box 330
Manchester, New Hampshire 03105-0330
603-634-3355
bersara@PSNH.com

ATTACHMENT 1

**Site Evaluation Committee
Testimony
of
Robert J. Berti**

TESTIMONY

New Hampshire Site Evaluation Committee
SEC Docket Number 2009-02
Laidlaw Berlin BioPower LLC

Comments by:

Robert J. Berti, President
North Country Procurement, Inc.
PO Box 93
Rumney, NH 03266
(603) 786-2289, ncprumney@roadrunner.com

1. Background of Robert Berti
 - a. Licensed professional forester and surveyor with degrees from the University of Massachusetts and the University of New Hampshire.
 - b. Granite State Society of American Foresters – Forester of the Year Award
 - c. New England Society of American Foresters – Forester of the Year Award
 - d. Served on several state boards and committees including:
 - i. State Licensing Board for Foresters
 - ii. Current Use Advisory Board
 - iii. Selectman – Town of Rumney for 22 years
 - iv. Board of Directors – New Hampshire Timberland Owners for 8 years
 - e. Full time practicing forester for over 40 years
 - i. Owner for over 30 years of FORECO LLC, a forest resource company, which manages 45,000 acres of land in New Hampshire and Vermont.
 - ii. Over 20 years experience in wood fuel procurement and wood fuel analysis.
 - f. Have conducted/participated in resource studies for the following fuel to energy plants:
 - i. Pinetree Power - Bethlehem
 - ii. Pinetree Power – Tamworth
 - iii. Pinetree Power – Fitchburg
 - iv. Pembroke Power Associates
 - v. Bridgewater Power
 - vi. Alexandria Power
 - vii. Russell Biomass (Russell, MA)-proposed
 - viii. Two facilities in Connecticut-proposed
 - ix. Two facilities in Rhode Island-proposed

- x. PSNH Schiller Station
 - xi. Concord Steam-proposed replacement plant
 - xii. Clean Power Development LLC-proposed
2. Background information of North Country Procurement, Inc., a wood fuel procurement firm, co-owned by Robert Berti and James Dammann.
 - a. Purchase fuel for 6 power plants located in NH, VT and MA
 - b. Purchase fuel for 3 thermal plants located in NH, VT and MA
 - c. Purchase fuel for 1 school district in central NH
 - d. NCP are not brokers, but arrange for wood fuel deliveries between timber harvesting companies and power facilities.
 - e. Advise and consult with plant owners and plant managers on near and long term marketing conditions.
 - f. Have introduced harvesting and safety protocols for timber harvesting companies.
 3. General comments
 - a. As consultants for Clean Power Development LLC, our study recommended a plant of 25-30 megs and not the original proposed 50 megs
 - b. I am here today not representing any plant, firm or individual.
 - c. I am a principle in the Russell Biomass plant in Russell, MA.
 4. Focus of comments: forest industry, forest resource, procurement analysis and rate payer interest.
 - a. Forest industry
 - i. Biomass plants brought new and positive impacts to the timber harvesting industry.
 - ii. Improved production
 - iii. Dramatic increase in safety
 - iv. Substantial increase in capital outlay
 - v. Require owners to be savvy business people to plan and sell their forest products.
 - vi. Most have a successful/better track record than most businesses.
 - vii. How forest products businesses are run.
 - viii. Direct to sawmills, pulpmills and power plants.
 - ix. No need for brokers. Do not need to place financial expense on another firm.
 - x. Have taken advantage of diversified or well distributed power plant base.
 - b. Forest resource
 - i. Silvicultural impacts
 1. Majority of the instances are positive
 2. Outlet for low grade markets
 3. Pre-commercial thinning now commercial
 4. Less impact on forest floor
 5. Reduced residual damage
 - ii. Sustainability issue
 1. Not easy to measure. To me if land remains capable of growing trees, it's sustainable. If you harvest more than growth, it may or may not be sustainable.
 2. Is harvesting a tree for biomass now which will have a higher and better use in the future, sustainable?
 - iii. Cost to monitor a timber harvest

1. Burlington Electric – Vermont
 - a. Simple plan
 - b. Map and one page
 - c. \$1.75/ton
 - d. Does not include cost to state of Vermont
- c. Procurement analysis
 - i. Have not read in depth the testimony of procurement costs and analysis; however, I have heard some of the testimony given to this committee and based on what I have heard my conclusion as an individual with 40 years of forest resource and procurement experience, I find the information to be lacking in depth and several conclusions to be misleading and the understanding of wood production and availability to be flawed. Some reasons for this statement:
 1. Comparison of wood consumption at Groveton and Berlin. This was pulpwood not biomass. Product at Groveton was \$5-\$7/ton higher than biomass. This is not the same product.
 2. Berlin was buying pulpwood, not fuel chips.
 3. Biomass (fuel) cannot compete with pulpwood. There are two pulp mills buying wood in the Berlin area.
 4. 2.5 years ago, biomass plants were unable to procure enough fuel chips and paid \$35+/ton, pulpwood was at \$60+/ton.
 5. Softwood bark mulch market is a seasonal product from January-July and was \$40+/ton at the sawmill.
 6. Back hauls
 - a. Change in market place; less bark from NH and ME; competition from CT and MA; landclearing is down; Schiller Station gets 30 percent from MA, mostly landclearing.
 7. Rails are very uneconomical. Participated in three studies where cost was \$6-\$20/ton higher than delivered wood to same facility; spent 6 months on VT study.
 - ii. Current market price for fuel chips
 1. North is \$27-\$29/ton
 2. Central is \$27-\$28/ton
 3. South is \$24-\$28/ton
 - iii. Impact on existing plants
 1. Two plants are severe
 2. Two plants are moderate to severe
 3. Two plants are slight to moderate
- d. Rate payer impacts
 - i. Conflicting public policy states 25% renewable by 2025
 - ii. PPA between Laidlaw on utility has real competitive questions
 1. Why right of first refusal?
 - iii. Has there ever been one before?
 1. Pass through on fuel cost
 2. Compare cost of fuel on energy cost

	Burn Rate/Ton/Hr	Cost/Ton	Cost/MW
Existing Plants	\$1.70	\$26	\$44.20
Laidlaw	\$1.60	\$35	\$56.00

Question:

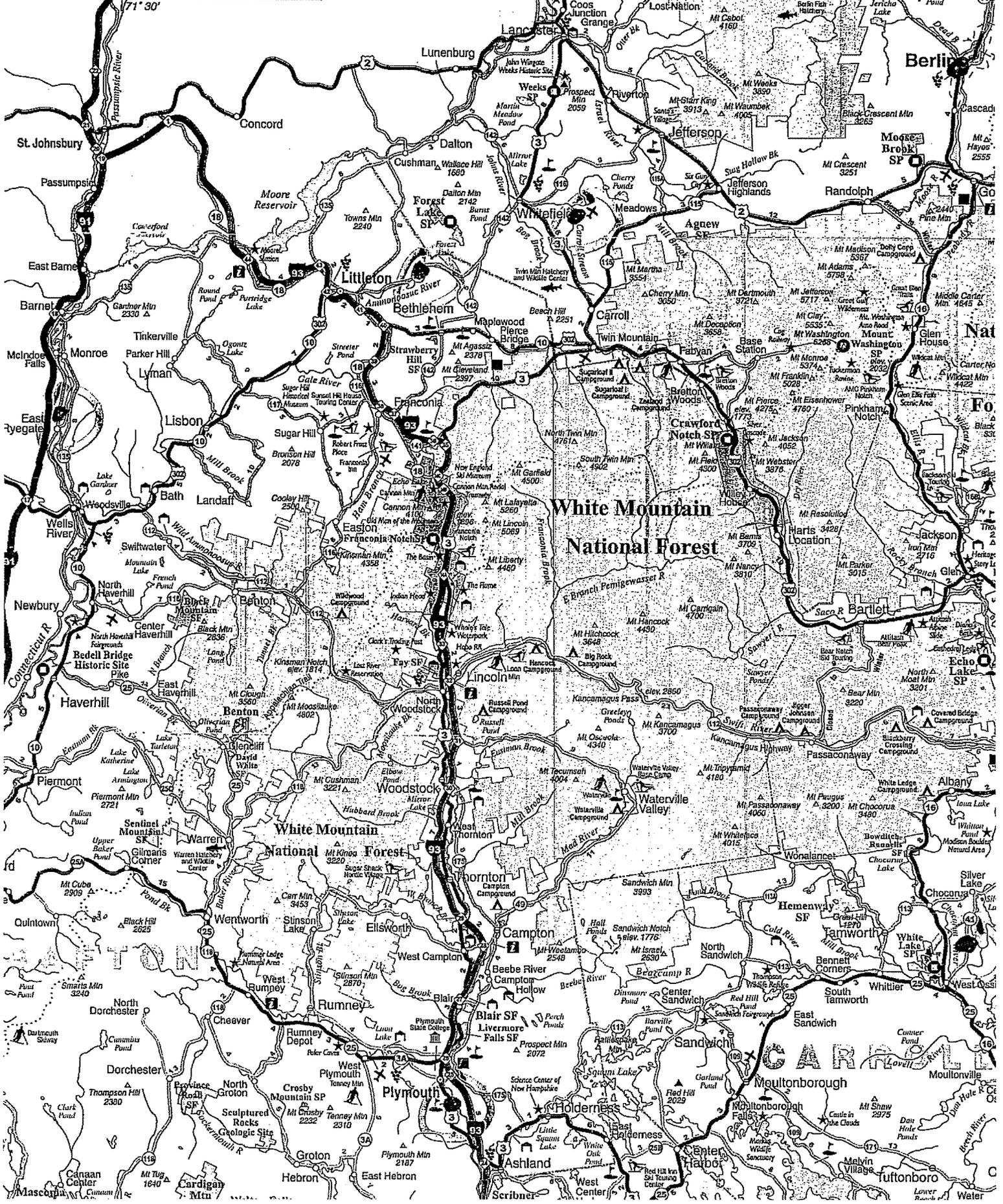
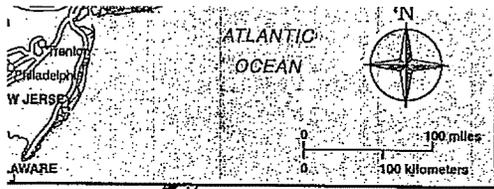
Four existing power plants are either off rate order or soon will be. Another proposed plant, Concord Steam, unable to obtain PPA. These plants are built and paid for and have stable balance sheet. Why are they unable to obtain a contract when Laidlaw can?

Net Effect under Present Scenario:

- 2-3 plants will close
- Less competition
- Loss of tax base to communities
- One large facility vs. three or more smaller facilities

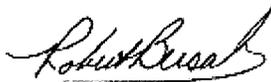
Summary:

- A lot of uncertainty
- Plant should be built in Berlin area, but careful consideration on size
- Better understanding of sustainability and impact on the resource
- Whose interest is being served? Is it the rate payers?
- Need to have a comprehensive study on fuel availability, price, electric needs and existing infrastructure.



CERTIFICATE OF SERVICE

I hereby certify that I served an electronic or written copy of this filing on the various Petitioners pursuant to Rule Puc 203.11.



Robert A. Bersak
Assistant Secretary and Assistant General Counsel
780 North Commercial Street
Post Office Box 330
Manchester, New Hampshire 03105-0330

(603) 634-3355
bersara@psnh.com