

**STATE OF NEW HAMPSHIRE  
BEFORE THE  
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION**

**DE 10-195  
PSNH**

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

**PETITION FOR INTERVENTION AND  
MOTION FOR EXPEDITED CONSIDERATION**

NOW COMES Laidlaw Berlin BioPower, LLC (“LBB”) and hereby petitions the New Hampshire Public Utilities Commission for intervention in the above-captioned proceeding pursuant to RSA 541-A:32 and NH Code Admin. Rule Puc 203.17; and moves that this Commission expedite its consideration of the Petition for Approval filed by Public Service Company of New Hampshire. In support thereof, LBB states the following:

1. By Petition dated July 26, 2010, Public Service Company of New Hampshire (“PSNH”) petitioned this Commission, under the provisions of RSA 362-F:9, for approval of a multi-year purchase agreement with LBB, a renewable energy source, for renewable energy certificates, in connection with a Power Purchase Agreement (“PPA”) from such source, to meet reasonably projected renewable portfolio requirements and default service (Energy Service) needs.
2. By this Petition, LBB hereby seeks to intervene in the aforementioned adjudicative proceeding pursuant to NH Code Admin. Rule Puc 203.17 and New Hampshire RSA 541-A:32. Regulation Puc 203.17 provides that, “The Commission shall grant one or more petition to intervene in accordance with the standards of RSA 541-A:32.” RSA 541-A:32 provides that a petition to intervene should be granted if the petition (1) “states facts

demonstrating that the petitioner's rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law" and (2) "the presiding officer determines that the interest of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention." RSA 541-A:32, I.

3. LBB is a New Hampshire limited liability company which has proposed to construct, operate and maintain a biomass-fueled electrical generation facility (the "Project") to be located in Berlin, New Hampshire. LBB has entered into a PPA with PSNH which is the subject of the aforementioned Petition for Approval filed by PSNH. As set forth in the Petition, PSNH's obligation to begin purchases of the Project's output under the PPA "is contingent upon . . . receipt from this Commission of a final, non-appealable decision approving and allowing for full cost recovery of the rates, terms and conditions of the PPA." See Petition for Approval at par. 5.

4. As such, LBB's "rights, duties, privileges, immunities and other substantial interests" are clearly and directly affected by this proceeding in that a Commission decision approving and allowing for full cost recovery by PSNH, as requested in the Petition for Approval, is a prerequisite to LBB assuming the "rights, duties, privileges [and] immunities" set forth in said PPA.

5. Furthermore, as a party to the PPA which is the subject of the Petition for Approval, LBB has "substantial interests" that will be affected by the Commission's action on the Petition for Approval.

6. The interest of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing intervention by LBB. LBB intends to coordinate with PSNH in the

proceedings before the Commission in that both LBB and PSNH have similar interests in securing favorable action on this Petition for Approval. Moreover, LBB's participation in the proceeding will expedite its resolution because the proceeding may involve matters whose disposition requires information relating to the Project that is in the possession or control of LBB, rather than PSNH.

7. LBB further requests that the Commission investigate and act on the PSNH Petition on an expedited basis because financing for and commencement of construction of the Project are highly dependent on the contract becoming effective prior to November 10, 2010.

8. Specifically, the Project's financing plan utilizes a program established under Section 1603 of the American Recovery and Reinvestment Act of 2009 (the "1603 Program") which provides cash to qualifying renewable energy investment in lieu of the investment tax credit otherwise available under Section 48 of the Internal Revenue Code (the "ITC Credit"). The 1603 Program is available only to qualifying facilities that commence construction prior to January 1, 2011. (See Sec. 1603(a)(2)).

9. The Project is the subject of current contingent allocations of New Market Tax Credits ("NMTC"). These are separate federal tax credits allocated on a highly competitive basis through established community development entities ("CDEs") approved by the U.S. Treasury Department. The Project has attracted \$43.5 million of contingent NMTC allocations by working collaboratively with three separate CDEs. These CDEs must use their NMTC allocations within certain time frames as required by their contracts with the U.S. Treasury Department. Significantly, each of the three CDEs have committed portions of their NMTC allocations to the Project under the condition that these allocations be used in an NMTC-

financing transaction by November 15, 2010. If the transaction closing does not occur by this date, each of these CDEs may reallocate their NMTC allocations to other projects.

10. As part of the planned NMTC financing, the Project will execute contractual agreements with the CDEs to establish a \$2.2 million cash fund that will capitalize a small and medium enterprise (“SME”) local revolving loan fund which will provide needed access to capital to a variety of local businesses. Such assistance is necessary to allow many of the smaller potential local wood suppliers to purchase new equipment or overhaul/convert existing equipment to help supply the 700,000 tons of biomass required by the Project on an annual basis. A timely NMTC financing is needed to capture this benefit.

11. In addition, the Project is eligible for Recovery Zone Facility Bonds (“RZFB”). RZFB authority was granted to each state as part of the American Reinvestment and Recovery Act and provides states with the ability, through their designated economic development entities, to issue tax-exempt bonds that can be used to finance eligible projects and businesses. The New Hampshire Business Finance Authority has committed most of its RZFB authority but may have at least \$20 million of such authority unused and available. The Project is an excellent candidate to absorb any unused RZFBs. However, RZFB authority must be used by the individual states before year end 2010 or will be lost.

12. Finally, while the Project may be able to re-assemble some of the forgoing financing benefits in a revised financing plan next year, northern New Hampshire needs jobs now, not next year. In addition to the significant boost to the local economy generally, the Project has agreed to support specific improvements that will benefit the operators of the existing Fraser Paper Mill. The Project will provide excess heat, hot water and steam that can use the existing pipeline infrastructure to deliver water and/or steam to Fraser (and/or other local users)

at improved rates, thereby creating support for retaining, or expanding, what remains of the industrial base in the Berlin area.

13. For all these reasons, LBB respectfully requests that the Commission act upon PSNH's Petition for Approval and render a final decision on or before November 10, 2010.

14. Petitioner PSNH supports the relief requested in this Motion.

15. To the extent that any of the foregoing facts are required to be supported by affidavit or other sworn testimony, LBB is prepared to provide one or more witnesses to do so.

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WHEREFORE, Intervenor LBB respectfully requests that this Commission:

- A. Grant it intervenor status;
- B. Establish a procedural schedule that will allow the Commission to issue a final order on or before November 10, 2010; and,
- C. Grant such further relief as may be just and proper.

Respectfully submitted,

**LAIDLAW BERLIN BIOPOWER, LLC**

By Its Attorneys,

**RATH, YOUNG AND PIGNATELLI, P.C.**

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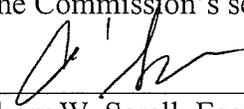
August 17, 2010

By:   
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Andrew W. Serell, Esquire  
(NH Bar No. 2298)

**CERTIFICATE OF SERVICE**

Pursuant to NH Code Admin. Rule Puc 203.02(2) and Puc 203.11, I have served a copy of this Petition on each person identified on the Commission's service list for this docket.

August 17, 2010

By:   
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Andrew W. Serell, Esquire