

STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

In re: Petition for Approval of Power Purchase Agreement) Docket No. DE 10-195
with Laidlaw Berlin BioPower, LLC)

**PETITION TO INTERVENE OF
BRIDGEWATER POWER COMPANY, L.P., PINETREE POWER, INC., PINETREE
POWER-TAMWORTH, INC., SPRINGFIELD POWER LLC, WHITEFIELD POWER &
LIGHT COMPANY, AND INDECK ENERGY -- ALEXANDRIA, LLC**

Pursuant to Admin. Rule Puc 203.17 and RSA 541-A:32, I(b), Bridgewater Power Company, L.P., Pinetree Power, Inc., Pinetree Power-Tamworth, Inc., Springfield Power LLC, Whitefield Power & Light Company, and Indeck Energy -- Alexandria, LLC request intervention in this proceeding. This petition rests upon the following grounds.

1. Bridgewater Power Company, L.P. ("Bridgewater"), Pinetree Power, Inc. ("PPI") Pinetree Power-Tamworth, Inc. ("PPTI"), Springfield Power LLC ("Springfield"), Whitefield Power & Light Company ("Whitefield"), and Indeck Energy -- Alexandria, LLC ("Alexandria") (collectively, the "Wood-Fired Plants") each has a principal place of business and operates a wood-fired small power production facility located respectively in Bridgewater, Bethlehem, Tamworth, Springfield, Whitefield, and Alexandria, New Hampshire.

2. On July 26, 2010, Public Service Company of New Hampshire ("PSNH") filed a petition ("PSNH Petition") for approval of a twenty-year power purchase agreement ("PPA") with Laidlaw Berlin BioPower, LLC ("Laidlaw") for the purchase of energy, capacity, renewable energy certificates ("RECs"), and other defined environmental attributes for potential use under the State's renewable portfolio standard law, RSA 362-F (the "RPS").

3. Laidlaw proposes to develop a 70 MW biomass generation facility which will utilize wood chips, wood residue, and other low grade wood materials ("Biomass") as fuel.

When operating at full capacity, the facility will utilize approximately 750,000 tons of Biomass fuel per year. This fuel is projected to be sourced within a 100 mile radius of the City of Berlin, where the facility is to be located. Testimony of T. Large at 2, filed July 26, 2010.

4. The PPA contains a "Wood Price Adjustment" or "WPA" clause that adjusts the price that PSNH will pay Laidlaw for energy based upon some factor of change in "the actual average \$/ton Biomass Fuel cost that PSNH paid for Biomass Fuel at its Schiller station facility." Testimony of Gary A. Long filed July 26 2010 at GL-1, Section 6.1.2(a)(ii). The PPA also grants PSNH an option to purchase the Laidlaw facility and right of first refusal. *Id.* at Article 7.

5. N.H. Code Admin. Rules PUC 203.17 requires the Commission to grant petitions to intervene in accordance with the standards of RSA 541-A:32. Section I of RSA 541-A:32, mandates intervention if a petitioner demonstrates that its "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." RSA 541-A:32, I. Discretionary intervention is permitted under RSA 541-A:32, II when the Commission determines "that such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the proceedings." RSA 541-A:32, II; *see also In re: Public Service Company of New Hampshire, Reconciliation of 2009 Energy Service and Stranded Cost Recovery Charges*, 2010 N.H. PUC Lexis 70 at *2 (July 20, 2010) (Petitioners were granted intervention pursuant to RSA 541-A:32, II, where the petitioners "raised certain issues that are relevant to this proceeding that [would] not necessarily be addressed by other parties and, in the Commission's discretion, [would] serve the purposes of justice if pursued.").

6. The Wood-Fired Plants utilize Biomass fuel as their fuel source. The Wood-Fired Plants obtain their fuel primarily from New Hampshire, and primarily within a small radius

of each facility. The Laidlaw facility and the Wood-Fired Plants will compete for Biomass fuel and will have similar geographic markets for Biomass fuel procurement. The Wood-Fired Plants have a substantial interest in the availability and cost of this Biomass fuel. This substantial interest would be directly affected by approval of the PPA and its use by the Laidlaw facility, because, as the largest Biomass-fueled facility in the State, it will create a major new demand for Biomass, and thereby affect the availability and price of Biomass. Fuel cost is the largest operating cost for each of the Wood-Fired Plants, and increases in Biomass fuel prices can threaten their economic viability. The PPA's Wood Price Adjustment clause affects the Wood-Fired Plants' substantial interest in Biomass fuel cost and their economic viability because the WPA clause allows Laidlaw to pay more for Biomass without necessarily affecting that facility's economic viability. These interests are related to the Commission's public interest determination under RSA 362-F:9, II (a) (furthering the purposes and goals of the RPS), (c) (creating a reasonable mix of uses in accordance with RSA 378:37-41), and (e) (whether approval will result in a net economic benefit). *See* RSA 362-F:9, II(a),(c), and (e); *see also* paragraphs 10 and 12 below.

7. Approval of the PPA will directly affect the Wood-Fired Plants substantial interests in selling their energy and capacity, and for Alexandria, its New Hampshire Class I RECs to PSNH and the wholesale power market. The Wood-Fired Plants compete with Laidlaw to provide these products to PSNH, and PSNH's need for these products is limited. The PPA would affect PSNH's need to purchase energy from the Wood-Fired Plants for a twenty year period. Bridgewater currently sells its electricity into a spot market. PPI and PPTI currently sell energy, capacity, and Class III New Hampshire RECs to PSNH, but their contracts end December 31, 2010. In addition, Alexandria, which currently sells its energy and capacity into a

spot market, will compete with Laidlaw for the sale of New Hampshire Class I RECs. This issue is related to the Commission's public interest determination under RSA 362-F:9, II (a) (dealing with whether a noncompetitive procurement is cost-effective, and whether detrimental effects to Class III of the RPS will result), and (d), (dealing with competitive procurement practices). *See* paragraphs 10 and 12, below.

8. Approval of the twenty-year-long PPA will also directly affect the Wood-Fired Plants' substantial interest in their tariff rates. PSNH's obligation to purchase under the PPA is contingent upon receipt of a final, nonappealable decision approving and allowing for full cost recovery of the rates, terms and conditions of the PPA. PSNH Petition at 2. The reason that RSA 362-F:9 requires Commission approval of the PPA is to allow PSNH to recover the prudently incurred costs of such agreements in its energy service rates. *See In Re: PSNH Petition for Approval of a Power Purchase Agreement and a Renewable Energy Certificate Option Agreement with Lempster Wind, LLC*, 2009 N.H. PUC Lexis 34 at *29-30 (May 1, 2009). The Commission will be making determinations whether the rates, terms, and conditions of the PPA are reasonable. *See id.* at *28 (finding pricing terms for energy, capacity, and RECs in PPA with Lempster Wind, LLC to be reasonable). Each of the Wood-Fired Plants buys back-up power supply from PSNH. Approval of full cost recovery of the rates, terms and conditions of the PPA directly affects rates for all of PSNH's customers, including purchasers of back-up power supply.

9. The Wood-Fired Plants, as wholesale sellers of renewable energy have a substantial interest in the competitive wholesale power market for renewable energy and the procurement of such power. If approved, the PPA's twenty-year term with the WPA clause impacts the competitive wholesale market for all generators. This docket raises issues whether

the contract approval is in the public interest, where the PPA was procured without a competitive procurement process, *see* RSA 362-F:9, II(d), that would have permitted competition as to price and terms by other generators, including the Wood-Fired Plants. Additionally, the PPA's purchase option affects the Wood-Fired Plants' interest in a competitive market and raises issues such as the PPA's compatibility with progress toward a competitive market and with the restructuring principle that utilities should not be acquiring new generation, unless perhaps it is small scale distributive generation, which the Laidlaw facility is not. *See id.* at (b); RSA 374-F:3, II and III; *see also* paragraphs 10 and 12, below.

10. PSNH's Petition asks the Commission to find that the PPA is in the public interest as required by the New Hampshire Renewable Energy Portfolio Statute, RSA 362-F:9, I, and that term is defined in RSA 362-F:9, II. Pursuant to RSA 362-F:9, II, the Commission must find that the PPA is, on balance, substantially consistent with:

- (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.

RSA 362-F:9, II.

11. PSNH claims that the PPA meets these factors because the PPA will, among other things, (a) provide fuel diversity to the state and New England (Testimony of T. Large at 7-8, filed July 26, 2010), (b) support efforts that develop the market for renewable power, *id.* at 8-9, (c) positively impact energy security and independence in the region through the use of locally harvested wood in support of RSA 378:37, *id.* at 8-14, (d) result in a procurement conducted in a manner that is administratively efficient and which promotes market-driven competitive innovations and solutions, *id.* at 14, and (e) provide economic development and environmental benefits to the State. *Id.* at 14-15.

12. PSNH's justifications and the effects that the PPA may have on the wood market, the Wood-Fired Plants market for their power and other products, and the Wood-Fired Plants' economic viability raise the following issues relevant to the public interest standard contained in RSA 362-F:9, II (a)-(e):

(a) whether approval of the PPA will further the purposes and goals behind the creation of Class I in a cost-effective manner given that no RFP was issued and procurement was not conducted in a competitive manner; and whether approval of the PPA will further the purposes and goals behind the creation of Class I at the expense of the purposes and goals of Class III (which applies to existing wood-fired power plants);

(b) whether, combined with PSNH's option to purchase such a large generation facility, the restructuring principles of "fully competitive and innovative markets" and "market competition" with "minimal economic regulation" of generation will be accomplished (*see* RSA 374-F:3, II and III);

(c) whether diversity and its benefits and the goals of RSA 378:37 are better achieved through purchases from one large generation facility rather than from a number of smaller facilities; and whether approval of the PPA will actually harm diversity available to PSNH and within New England by adversely affecting smaller scale generators such as the Wood-Fired Plants;

(d) whether the procurement was conducted in a competitive manner given that no RFP was issued; and whether the purchase option is a market driven competitive solution; and

(e) whether there will be any (and, if so, what level of) net economic benefit as the result of the PPA if the PPA adversely affects the Wood-Fired Plants, the associated plant and fuel procurement jobs, and the communities that benefit economically from the Wood-Fired Plants' continued operation.

13. The Wood-Fired Plants' intervention will not impair the prompt conduct of this proceeding.

WHEREFORE, the Wood-Fired Plants respectfully request that they be permitted to intervene in this proceeding as full parties.

Respectfully submitted,
BRIDGEWATER POWER COMPANY, L.P.,
PINETREE POWER, INC.,
PINETREE POWER-TAMWORTH, INC.,
SPRINGFIELD POWER LLC,
WHITEFIELD POWER & LIGHT COMPANY and
INDECK ENERGY – ALEXANDRIA, LLC

By Their Attorneys,

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By: /s/ David J. Shulock

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CERTIFICATE OF SERVICE

I hereby certify that, on this date, I caused the attached Petition to Intervene to be filed in hand and electronically to the Commission and electronically, or by U.S. Mail, first class to the persons identified on the attached Service List in accordance with NH Puc 203.11(c).

Date: 9/24/10

 /s/ David J. Shuock
David J. Shulock, Esq.