

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

**DE 10-195
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE**

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



**LIDLAW BERLIN BIOPOWER'S OBJECTION
TO PETITIONS FOR INTERVENTION**

NOW COMES Laidlaw Berlin BioPower, LLC ("LBB"), Intervenor in the above-captioned proceeding, and submits this Objection to certain Petitions for Intervention filed in this matter. LBB states the following:

INTRODUCTION

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") made with respect to a new biomass-fueled power plant being developed by LBB in Berlin, NH (the "LBB Project").
2. By pleading dated August 17, 2010, LBB petitioned for intervention in the above-captioned proceeding pursuant to NH Code Admin. Rule PUC 203.17, together with a motion for expedited consideration. That petition and expedited treatment motion remain pending. LBB's Objection here is directly tied to its motion for expedited consideration. LBB seeks to prevent its competitors from using this docket to protect their own economic interests by delaying action on the PPA into next year. LBB reiterates the economic benefits of a financial closing in 2010 on the LBB Project, as summarized in its expedited treatment motion, and underscored by the recent public announcement of the closure of the Fraser Paper facilities in Berlin. We urge the

Commission to refrain from using its discretion to allow standing to parties that cannot demonstrate it of right.

3. The nature of this proceeding is summarized by this Commission in its Order of Notice dated September 1, 2010:

The petition states that Laidlaw has made application for its project permits to the N.H. Site Evaluation Committee (SEC). (SEC Docket No. 2009-02) Upon approval of the SEC and the award of necessary permits, Laidlaw expects to begin construction in the fourth quarter of 2010 and begin operation during the second quarter of 2013.

PSNH proposed to recover the costs associated with the PPA through its default energy service rate.

The filing raises, *inter alia*, issues related to the terms and conditions of the PPA, how the costs of the PPA will be recovered, and whether the PPA meets the requirements of RSA 362-F:9 and is in the public interest.

(See Order of Notice dated September 1, 2010 at pp. 1-2).

4. On September 21, 2010, the SEC unanimously voted to grant a Certificate of Site and Facility to LBB.

5. LBB is objecting to the Petitions to Intervention filed in this proceeding by the following entities: (i) Concord Steam Corporation (“CSC”); (ii) New England Power Generators Association, Inc. (“NEPGA”); (iii) Clean Power Development, LLC (“CPD”); (iv) Edrest Properties, LLC (“Edrest”); and (v) a collection of entities - - 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.”¹

¹ The City of Berlin also filed a Petition to Intervene which is not the subject of this Objection. LBB takes no position on the Petition filed by the City of Berlin.

STANDARD FOR INTERVENTION

6. Regulation Puc 203.17 provides that, “The Commission shall grant one or more petitions 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 qualified as an intervenor under 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. The New Hampshire Supreme Court has explained that this standard requires that a petitioner articulate an “injury in fact” that is direct and immediate. Appeal of Richards, 134 N.H. 148, 154 - 56 (1991)(a party must allege a “direct injury” and demonstrate that his rights “may be directly affected” by the decision in order to have standing); Appeal of Stonyfield Farm, Inc., 159 N.H. 227, 229 (2009) (explaining that no standing exists without an “immediate or direct injury.”)

7. Here, each of the Petitions to Intervene fail to meet the requirements set forth in RSA 541-A:32, I. Accordingly, the Petitions for Intervention should be denied.

The Petition to Intervene of the Wood-Fired Plants Should be Denied Because it Fails to Allege a Direct Injury or Substantial Interest that May be Impacted by a Ruling in this Proceeding.

8. The Wood-Fired Plants’ Petition asserts several bases for intervention: (1) that the LBB Project will affect the availability and price for wood fuel; (2) a general concern about PSNH wholesale power supply procurement practices; (3) general impacts on competitive markets from increased wholesale supplies of energy, capacity and renewable energy credits (“RECs”); and (4) a potentially negative impact on tariff backup service electric rates. For the

reasons set forth below, none of these allegations meet the standing requirements under New Hampshire law.

Allegations Relative to the Biomass Fuel Market Do Not Confer Standing.

9. The allegation that approval of the PUC Petition will have an upward impact on the price of wood fuel is wholly unsupported. Such an unsupported allegation cannot provide grounds for standing.

10. Second, the wood “basket” that the LBB Project will draw from was thoroughly examined by the Site Evaluation Committee (SEC). The SEC heard several days of testimony concerning the potential impacts of the LBB Project on local biomass supplies and markets, including testimony from interests representing some of the Wood-Fired Plants. The Wood-Fired Plants essentially seek to have this Commission address the same subject matter.

11. Third, the issue of biomass availability and pricing is one of general commodity markets, potentially affecting the general economy in a variety of ways that go far beyond the scope of this Docket. Such general impacts create no separate basis for standing. See Appeal of Richards, 134 N.H. at 156 (“No individual or group of individuals has standing . . . when the alleged injury caused by the administrative agency’s action affects the public in general. . . .”); Blanchard v. Railroad, 86 N.H. 263, 264 (1973)(quoting Bennett v. Tuftonborough, 72 N.H. 63, 64 (1903)(standing is conferred only to parties “who [are] interested in or affected by the proceedings in some manner different from the public, citizens, and taxpayers generally. . . .”)).²

Allegations Relative to PSNH Procurement Practices do not Confer Standing.

² In the course of their argument, the Wood-Fired Plants cite the PPA’s Wood Price Adjustment clause, which they assert allows LBB to pay more for wood fuel without affecting the LBB project’s economics. But as the PPA makes clear, that statement is plainly false. Either the LBB plant, or its contracted fuel suppliers, always make more money by paying less for wood fuel.

12. The broad issue of utility wholesale power procurement practices is not within the scope of this Docket. Rather, the only issue is whether bi-lateral contract negotiations are consistent with RSA 362-F:9, something the Commission affirmed in Docket NO. DE 08-077, *Lempster Wind, LLC* (Order No. 24,965, May 1, 2009). No party has standing simply by reason of its desire to expand this Docket to address broader issues or other, unrelated subject matter.

13. We note that PSNH's procurement practices relative to wholesale supply may be the subject of other current Dockets, including Docket No. DE 10-160: Public Service Company of New Hampshire – Investigation into Effect of Customer Migration on Energy Service Rates.

The Fact That the Wood-Fired Plants are Alternative Energy Suppliers Do Not Grant them Standing.

14. The fact that the Wood-Fired Plants arguably compete with LBB in the wholesale energy market, or any market, cannot be the basis for granting its Petition for Intervention. “[I]njury resulting from competition is rarely classified as a legal harm but rather is deemed a natural risk in our free enterprise economy.” *Cf. Valley Bank v. State*, 115 N.H. 151, 154 (1975) (citing 1967 C.J.S. Competition (1967, Supp. 1974); W. Prosser, *Law of Torts*, 130, at 954-62 (1971)). As such, general impacts on competitive markets from increased wholesale supply of energy, capacity and RECs is not a “direct injury” specific to the Petitioners.

15. This case is not like Appeal of Union Telephone Company, 999 A.2d 336 (N.H. 2010). There, the NH Supreme Court held that Union Telephone Company had standing because the Commission's orders had the effect of imposing competition within Union's regulated service territory, with the service territory constituting the specific interest being affected. No such property or interest is affected by any Commission action in this Docket.

Allegations Regarding PSNH Rate Impacts Do Not Afford Standing.

16. The Wood-Fired Plants allege that each buys back-up power supply from PSNH and that “[a]pproval of full 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.” (See Petition to Intervene at par. 8).

17. It is well established that no ratepayer can claim standing based on rate impacts of a Commission order until and unless the utility commences a rate making proceeding. See Appeal of Campaign for Ratepayer Rights, 142 N.H. 629 (1998) (ratepayers lacked standing to appeal PUC decision to approve special contracts between PSNH and certain industrial customers”); *Stonyfield Farm, Inc.*, (ratepayers lacked standing to challenge PSNH’s installation of mercury technology at its power plant). As the Supreme Court stated in *Stonyfield Farm*, “any potential injury the petitioners may suffer would arise only in a subsequent rate setting proceeding.” 159 N.H. at 231.

The Petition to Intervene of Concord Steam Should be Denied.

18. The Petition to Intervene filed by Concord Steam Corporation alleges two bases for intervention: (1) like the Wood-Fired Plants, it also alleges that the Laidlaw project will increase the demand for wood fuel, which could potentially impact the price of available biomass; and (2) it asserts a general concern about PSNH procurement practices. For the reasons set forth in paragraphs 9-13, above, neither allegation provides Concord Steam with standing to intervene in this matter.

The Petition to Intervene of Clean Power Development Should be Denied.

20. The Petition to Intervene filed by CPD raises the same general concerns regarding PSNH procurement practices. For the reasons set forth in paragraphs 12-13, above, such allegations are insufficient to confer standing to intervene.

The Petition to Intervene of NEPGA Should be Denied.

21. The Petition to Intervene filed by NEPGA asserts a general interest regarding PSNH procurement practices. For the reasons set forth in paragraphs 12-13 above, such allegations are insufficient to confer standing to intervene. Moreover, an association has no standing to challenge an administrative agency's action based upon a "mere interest in a problem." Appeal of Richards, 134 N.H. at 156 (quoting Sierra Club v. Morton, 405 U.S. 727, 739 (1972)).

The Petition to Intervene of Edrest Properties LLC Should be Denied.

22. Edrest alleges nothing more than that it owns or leases properties which use electricity. The Petition contains no allegation that Edrest is a PSNH ratepayer. Even if it is, that allegation would be insufficient to confer standing for the reasons set forth in paragraphs 16-17, above.

CONCLUSION

23. The Petitioners do not need standing to make their concerns known to the Commission. They do need standing in order to create delay and cost for LBB and delay the effects of the LBB Project on the economy of New Hampshire. For the foregoing reasons, the various Petitions for Intervention should be denied.

Respectfully submitted,

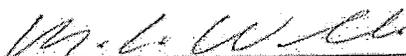
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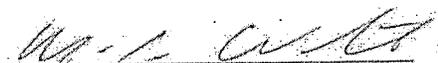
September 28, 2010

By: 
M. Curtis Whittaker, Esquire

CERTIFICATE OF SERVICE

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

September 28, 2010

By: 
M. Curtis Whittaker, Esquire