

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)

**CONCORD STEAM CORPORATION'S AND THE WOOD-FIRED IPP's
JOINT MOTION TO CONTINUE PROCEDURAL SCHEDULE
AND FOR EXPEDITED TREATMENT**

Pursuant to Admin. Rule Puc 203.07, Concord Steam Corporation, and the Wood-Fired IPPS move the Commission to continue the procedural schedule. This motion rests upon the following grounds.

1. In Order No. 25,158, issued October 15, 2010, the Commission approved a very expedited procedural schedule for this docket and denied, in part, a motion for confidential treatment filed by Public Service Company of New Hampshire ("PSNH"). *In re: Public Service Company of New Hampshire Petition for Approval of Power Purchase Agreement with Laidlaw Berlin Power, LLC*, Docket No. DE 10-195, Prehearing Conference Order at 14 (October 15, 2010) ("Order No. 25,158"). The Commission directed PSNH to "promptly provide" unredacted copies of the "PPA as well as Mr. Labrecque's testimony and exhibits" to the parties to the proceeding and to file the same with the Commission. *Id.*

2. As the Commission noted in Order No. 25,158 disclosure of the information at issue is central to the public's understanding of the Commission's eventual findings in the docket on PSNH ratepayer responsibility for a twenty-year contract between PSNH and Laidlaw. The Commission noted that disclosure permits a "fully transparent review of the costs of the PPA." Disclosure of the information at issue is no less important to the participation of the intervenors in this docket.

3. Notwithstanding its request for an expedited docket schedule, PSNH has refused to comply with the Commission's order and has thereby rendered the procedural schedule and discovery thereunder impracticable. On October 19, 2010 PSNH filed a letter with the Commission stating that it would not submit the information at issue under the terms of Order No. 25,158. Exhibit 1. Instead, PSNH stated that it is in consultation with Laidlaw Berlin Power, LLC to determine what course of action PSNH should take. In the meanwhile, PSNH has invoked the protections of N.H. Admin. Rule §203.08(i), which prevents disclosure of the information to the parties until PSNH has "exhausted or waived" "all rights to rehearing and to appeal." The PSNH letter also stated that the letter was not a motion for rehearing of Order 25,158. Given that statement, Concord Steam and the Wood-Fired IPP intervenors reserve the right to respond to any motion for rehearing that may be filed by PSNH in the future.

4. PSNH's chosen course of action, however, poses serious problems for the advancement of this proceeding under the existing procedural schedule. PSNH's actions enable it to delay disclosure of information central to the meaningful participation of intervenors at least until the time for filing a motion for rehearing, the filing of objections, and the issuance of a decision have passed -- that is, not only beyond the discovery deadline of October 25, 2010, but also beyond the deadline for filing intervenor testimony of November 23, 2010.

5. Requiring the parties to prepare discovery and to submit testimony without access to the information at issue, which is key to understanding and evaluating the PPA, would be enormously prejudicial and a denial of due process. Yet this is the result under the PSNH letter.

6. Similarly, Laidlaw indicated in its response to the Wood IPP's first data request that it will provide copies of only non-confidential information to the intervenors. Laidlaw also noted in its response to staff's data request Staff-LLB-1-1 that Laidlaw is seeking approval from

the SEC to share confidential information, but only with Staff, OCA, and the Commission. Exhibit 2. Furthermore, Laidlaw filed a motion for confidential treatment that seeks to prevent public access and intervenor access to information requested in discovery by the parties. Under these circumstances, the procedural schedule is unworkable and must be continued pending resolution of access to this information.

WHEREFORE, Concord Steam and the Wood-Fired IPPs move the Commission to:

- (a) continue the procedural schedule at least during the 30 days that PSNH has to decide whether to file a motion for rehearing;
- (b) schedule a technical session on or after November 29, 2010 at which time the parties will know PSNH and Laidlaw's decision, and can address a new procedural schedule; and
- (c) grant expedited treatment of this motion, as the period for discovery ends in just two business days from the date of this filing.

Respectfully submitted,

CONCORD STEAM CORPORATION

By Their Attorneys,

UPTON & HATFIELD, LLP

By: Justin C. Richardson

Justin C. Richardson
159 Middle Street
Portsmouth, NH 03801
jrichardson@upton-hatfield.com

Robert Upton, II. Esq.
23 Seavey Street
P.O. Box 2242
No. Conway, NH 03860-2242
rupton@upton-hatfield.com

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

By Their Attorneys,

BROWN, OLSON & GOULD, P.C.

By: 
David J. Shulock, Esq.
Robert A. Olson, Esq.
2 Delta Drive, Suite 301
Concord, NH 03301-7426
(603) 225-9716
rolson@bowlaw.com
dshulock@bowlaw.com

CERTIFICATE OF SERVICE

I hereby certify that, on this date, I caused the attached Motion to Continue Procedural Schedule and for Expedited Treatment 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: 10/21/10


David J. Shulock, Esq.

EXHIBIT 1



**Public Service
of New Hampshire**

780 N. Commercial Street, Manchester, NH 03101

Public Service Company of New Hampshire
P. O. Box 330
Manchester, NH 03105-0330
(603) 634-3355
(603) 634-2438

bersara@psnh.com

A Northeast Utilities Company

Robert A. Bersak
Assistant Secretary and
Assistant General Counsel

October 19, 2010

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 Co. of New Hampshire and Laidlaw Berlin BioPower, LLC

Dear Secretary Howland:

Late Friday afternoon, Public Service Company of New Hampshire ("PSNH" or "the Company") received the Commission's "Prehearing Conference Order," Order No. 25,158, issued in Docket No. 10-195 on October 15, 2010. In that Order, contrary to past precedent and procedure, the Commission denied PSNH's detailed "Motion for Confidential Treatment Pursuant to RSA Chapter 91-A and N.H. Code Admin. Rules Puc §203.08" of certain confidential, commercial, or financial information contained in the Power Purchase Agreement ("PPA") entered into by and between PSNH and Laidlaw Berlin BioPower, LLC. The Commission directed PSNH to promptly make public that confidential, commercial, or financial information.

In the Order, the Commission appears to have distinguished the present case from past precedent based upon its impression that there is little likelihood of harm to PSNH or its customers if the confidential information was not protected from disclosure. The Order states, "We do not find that the possibility of such harm outweighs the public interest in being informed of the pricing terms of the contract inasmuch as approval of a PPA of this size could make future PPAs less likely," and goes on to cite PSNH President Gary Long's testimony to substantiate this finding.

Unfortunately, the Commission has misinterpreted Mr. Long's testimony - - the Company admits that Mr. Long's testimony could have been drafted more precisely to prevent such misinterpretation. The Commission cites to page 5 of Mr. Long's testimony (BATES 16) where he testifies, "At this time, PSNH's interest in entering into additional long term power purchase agreements is highly limited." Based upon that limited extract from Mr. Long's testimony, the

Commission substantiates its determination that it is unlikely for PSNH to be in the competitive market for any other PPAs in the near future. But, the Commission's understanding is incorrect. As one reads Mr. Long's testimony as a whole, it is clear that the Laidlaw PPA was based upon PSNH's requirements to fulfill Class I renewable energy requirements under the state's Renewable Portfolio Standards ("RPS") law. Indeed, the very next portion of Mr. Long's testimony following the cited provision explains that the Company's limited future interest in PPAs deals with PSNH's requirements to meet RPS mandates. It was not intended to mean that PSNH would not be in the competitive energy market at all. Attached hereto is an affidavit from Mr. Long providing this clarification of his testimony.

Three days prior to the Commission's Order, on October 12, 2010, as part of the roll-out of The Northern Pass transmission project, it was publically announced that, "PSNH is in discussion with HQ Hydro Renewable Energy to develop a long-term power purchase agreement to secure a long-term supply of renewable and reliable energy, as well as securing additional long term benefits for its customers in New Hampshire."¹ Governor Lynch lauded the possibility of bringing that new renewable power source to New Hampshire, and was quoted as saying, "This will increase renewable energy for New Hampshire, and it will be stable, competitively priced energy."² Clearly, such on-going discussions between PSNH and HQ Hydro Renewable Energy demonstrate that Mr. Long's testimony has been misinterpreted.³ The public release of the confidential pricing information contained in the Laidlaw PPA in the midst of PSNH's on-going negotiations with HQ Hydro Renewable Energy would have a chilling effect on those negotiations, and would indeed "affect PSNH[']s...ability to negotiate such contracts in the future."

Moreover, the Commission's approval of the Laidlaw PPA is not assured. If the Laidlaw PPA is ultimately rejected by the Commission, PSNH would immediately be back in the RPS market with the details of the rejected Laidlaw PPA available to every supplier. That potential eventuality is also inconsistent with the Commission's basis for denial of the confidentiality motion.

This letter is not intended to be a Motion for Rehearing of Order No. 25,158. The Company, in consultation with Laidlaw, is determining what course of action to take in light of the Commission's unprecedented denial of confidentiality for the Laidlaw PPA.

PSNH understands the importance of receiving a timely decision regarding the Laidlaw PPA, given the impacts delay would have on the availability of jobs, tax incentives, and other beneficial attributes of the Laidlaw project. However, until this issue reaches finality, pursuant to N.H. Admin. Rule Puc 203.08(i), "the information shall not be disclosed until all rights to

¹ The Northern Pass media release 10-002, October 12, 2010, available at <http://northernpass.us/TheNorthernPassAnnouncementPressRelease101210.pdf>

² Union-Leader, "Franklin Power Station a Winner," October 14, 2010. *See also*, Press Release, Office of the Governor, "Governor Lynch, Franklin City Officials Announce Major Job Creation Project;" October 12, 2010, and Laconia Citizen, "Energy project unveiled; impact called 'staggering'," October 13, 2010.

³ Although energy obtained from Hydro-Québec would be primarily from hydropower, it is not currently a renewable source recognized under the RPS statute. *See*, RSA 362-F:6,IV(a).

request rehearing and to appeal have been exhausted or waived.” Therefore, the Company will endeavor to act swiftly regarding this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert A. Bersak".

Robert A. Bersak
Assistant Secretary and
Assistant General Counsel

cc: Service List

EXHIBIT 2



McLane, Graf,
Raulerson & Middleton
Professional Association

11 South Main Street, Suite 500 | Concord, NH 03301
Tel: 603.226.0400 | www.mclane.com

OFFICES IN:
MANCHESTER
CONCORD
PORTSMOUTH
WOBBURN, MA

BARRY NEEDLEMAN
Email: barry.needleman@mclane.com
Licensed in NH

October 19, 2010

David J. Shulock, Esquire
Brown, Olson & Gould
2 Delta Drive, Suite 301
Concord, NH 03301

Re : DE 10-195 Public Service Company of New Hampshire
Petition for Approval of Power Purchase Agreement with Laidlaw Berlin
BioPower, LLC – Commission Staff Discovery – Set 1 Laidlaw

Dear Mr. Shulock:

I have enclosed Laidlaw Berlin Biopower, LLC's ("LLB") Responses to The Wood-Fired Independent Power Producers Data Requests – Set #1. This response should not be considered a waiver in any respect of any right that LLB may have to refuse to respond to discovery requests consistent with the Commission's ruling in *City of Nashua*, 90 NH PUC 300 (2005), on the basis that LLB is not sponsoring testimony nor is it the petitioning party in this proceeding.

Sincerely,

A handwritten signature in black ink, appearing to read "Barry Needleman".

Barry Needleman

BN:cb
Enclosure

cc: Discovery Service List

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
PETITION FOR APPROVAL OF POWER PURCHASE AGREEMENT
WITH LAIDLAW BERLIN BIOPOWER, LLC

DE 10-195

Laidlaw Berlin Biopower LLC's Responses to
The Wood-Fired Independent Power Producers Data Requests – Set #1

Date Received: October 13, 2010
Request No.: IPP LBB 1-1

Date of Response: October 19, 2010

REQUEST: Please provide a copy of all Laidlaw Responses to the Data Requests of all parties, commission staff and the Office of Consumer Advocate in this docket, said requests being incorporated herein by reference as if fully set forth herein.

RESPONSE: Laidlaw Berlin Biopower, LLC will provide copies of all such non-confidential data requests, subject to all objections made in such requests.



McLane, Graf,
Raulerson & Middleton
Professional Association

11 South Main Street, Suite 500 | Concord, NH 03301
Tel: 603.226.0400 | www.mclane.com

OFFICES IN:
MANCHESTER
CONCORD
PORTSMOUTH
WOBURN, MA

BARRY NEEDLEMAN
Email: barry.needleman@mclane.com
Licensed in NH

October 18, 2010

Suzanne Amidon
Staff Attorney
NH Public Utility Commission
21 S. Fruit Street, Suite 10
Concord, NH 03301-2429

Re : DE 10-195 Public Service Company of New Hampshire
Petition for Approval of Power Purchase Agreement with Laidlaw Berlin
BioPower, LLC – Commission Staff Discovery – Set 1 Laidlaw

Dear Ms. Amidon:

I have enclosed Laidlaw Berlin Biopower, LLC's ("LLB") Responses to Staff's Data Requests – Set #1. LLB is providing these responses to the PUC staff in an effort to assist it in expediting consideration of PSNH's petition in this case. These responses should not be considered a waiver in any respect of any right that LLB may have to refuse to respond to discovery requests consistent with the Commission's ruling in *City of Nashua*, 90 NH PUC 300 (2005), on the basis that LLB is not sponsoring testimony nor is it the petitioning party in this proceeding.

Sincerely,



Barry Needleman

BN:cb
Enclosure

cc: Discovery Service List

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
PETITION FOR APPROVAL OF POWER PURCHASE AGREEMENT
WITH LAIDLAW BERLIN BIOPOWER, LLC

DE 10-195

Laidlaw Berlin Biopower LLC's Responses to
Staff's Data Requests – Set #1

Date Received: October 8, 2010
Request No.: Staff LLB 1-1

Date of Response: October 18, 2010

REQUEST: Please provide copies of the confidential transcripts in SEC Docket 2009-02.

RESPONSE: Laidlaw Berlin Biopower, LLC is prohibited from releasing these transcripts pursuant to the SEC's Order. LBB has filed a Motion with the SEC requesting that these transcripts be made available to the PUC Staff, OCA and the PUC Commissioners. LBB requested expedited action in that Motion.

SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

Executive.Director@puc.nh.gov	ocalitigation@oca.nh.gov
aoconnor@nepga.org	peter@concordsteam.com
aws@rathlaw.com	rolson@bowlaw.com
bersara@psnh.com	rupton@upton-hatfield.com
bneedleman@mclane.com	steve.mullen@puc.nh.gov
cboldt@dtclawyers.com	suzanne.amidon@puc.nh.gov
dpatch@orr-reno.com	tom.frantz@puc.nh.gov
dshulock@bowlaw.com	
edward.damon@puc.nh.gov	
generalmail@dtclawyers.com	
george.mccluskey@puc.nh.gov	
grant.siwinski@puc.nh.gov	
hallsr@nu.com	
jmt@rathlaw.com	
jonathanedwards@ne.rr.com	
jrichardson@upton-hatfield.com	
jrodier@freedomenergy.com	
Ken.E.Traum@oca.nh.gov	
labrerc@psnh.com	
largetj@psnh.com	
martide@nu.com	
mcw@rathlaw.com	
Meredith.A.Hatfield@oca.nh.gov	
mes@concordsteam.com	

Docket #: 10-195-1 Printed: October 21, 2010

FILING INSTRUCTIONS:

a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with:

DEBRA A HOWLAND
EXEC DIRECTOR & SECRETARY
NHPUC
21 S. FRUIT ST, SUITE 10
CONCORD NH 03301-2429

b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.

c) Serve a written copy on each person on the service list not able to receive electronic mail.