

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Public Service Company of New Hampshire

Petition for Approval of PPA with Laidlaw Berlin BioPower, LLC

Docket No. DE 10-195

**LIDLAW BERLIN BIOPOWER, LLC'S MOTION FOR CONFIDENTIAL
TREATMENT PURSUANT TO RSA CHAPTER 91-A AND NEW HAMPSHIRE CODE
OF ADMINISTRATIVE RULES PUC § 203.08 OF PRO FORMA**

Intervenor Laidlaw Berlin BioPower, LLC ("LBB") respectfully requests that the Public Utilities Commission ("PUC") issue a protective order to maintain the confidentiality of its financial "pro forma." In support of its motion, LBB states as follows:

1. LBB has produced a confidential pro forma in response to data requests made by the PUC staff. The pro forma is LBB's business plan/financial model showing projected revenue and expenses for the LBB Berlin project.

2. LBB seeks confidential treatment of the pro forma pursuant to RSA § 91-A and Puc § 203.08 because it contains confidential, commercial and financial information regarding LBB. Specifically, LBB seeks a protective order under which the pro forma is treated confidentially and only the PUC staff assigned to Docket No. 10-195, the Commissioners and the Office of Consumer Advocate be permitted copies of the pro forma.

3. In *Lamy v. New Hampshire Public Utilities Commission*, 152 N.H. 106 (2005), the New Hampshire Supreme Court described a three-step analysis to determine whether information should be protected from disclosure under the Right to Know Law.

First, we evaluate whether there is a privacy interest at stake that would be invaded by the disclosure. If no privacy interest is at stake, the Right-to-Know Law mandates disclosure. Next, we assess the public's interest in disclosure. Disclosure of the requested information should inform the public about the

conduct and activities of their government. Finally, we balance the public interest in disclosure against the government interest in nondisclosure and the individual's privacy interest in nondisclosure.

Id. at 109. The PUC applies this test. *See e.g. Unitil Corporation and Northern Utilities, Inc.*, Order No. 25,014 (September 22, 2009) and *Public Service Co. of New Hampshire*, Order No. 25,037 (October 30, 2009).

4. LBB submits that there is a significant privacy issue at stake with respect to its pro forma. The pro forma contains confidential, commercial and financial information that is highly sensitive and would not normally be disclosed to the public and, in fact, has not been disclosed except to LBB's agents and on a limited basis at the Site Evaluation Committee (see below). Anything more than the limited disclosure contemplated herein would likely cause substantial harm to LBB's competitive position. *See Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 N.H. 540, 554 (1997).

5. The purpose of this proceeding is to evaluate PSNH's power purchase agreement with LBB. As such, the public does not have an interest in having access to LBB's confidential business and financial information contained in the pro forma. A private company does not open up its confidential financial model by entering into an agreement with a regulated company. Accordingly, LBB submits its legitimate privacy interest in its pro forma vastly outweighs any interest the public may have in disclosure.

6. Indeed, the New Hampshire Site Evaluation Committee has already ruled that LBB's pro forma is confidential and should be protected from public disclosure. *See Order on Partially Assented to Motion for Protective Order and Confidential Treatment for Certain Confidential, Commercial and Financial Documents in Docket 09-02 (June 9, 2010)* attached hereto as Exhibit A at 2. The Site Evaluation Committee ruled that:

Business plans and financial models clearly fit within the definition of commercial and financial information. Moreover, this commercial and financial information pertains to the internal policies and financial information of a private company. Therefore, the Applicant's business plan and financial model are exempt from public disclosure pursuant to RSA 91-A:5, IV.

Id.

7. Consistent with the Order from the Site Evaluation Committee, the PUC should issue a protective order for LBB's pro forma and limit its disclosure to the PUC staff, Commissioners and OCA.

WHEREFORE, Laidlaw Berlin BioPower, LLC respectfully requests the PUC:

- A. Grant this Motion for Confidential Treatment;
- B. Issue an order protecting LBB's pro forma and limiting its release to the PUC staff, Commissioners and the OCA; and
- C. Grant such other and further relief as may be just and equitable.

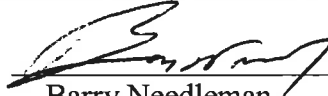
Respectfully submitted,

Laidlaw Berlin BioPower, LLC

By Its Attorneys,

McLANE, GRAF, RAULERSON & MIDDLETON,
PROFESSIONAL ASSOCIATION

Date: October 19, 2010

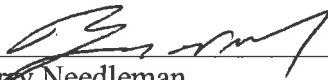
By: 
Barry Needleman
Eleven South Main Street
Concord, NH 03301
Telephone (603) 226-0400

RATH, YOUNG AND PIGNATELLI, P.C.

M. Curtis Whittaker
Andrew W. Serrell
One Capital Plaza
Concord, NH 03302-1500
Telephone (603) 226-2600

Certificate of Service

I hereby certify that on this 19th day of October, 2010, a copy of the foregoing Motion for Protective Order and Confidential Treatment has been forwarded to the service list in this matter.



Barry Needleman