

THE 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

Motion for Rehearing

October 22, 2010

Pursuant to RSA 541:3 and N.H. Code Admin. Rules Puc § 203.33, Public Service Company of New Hampshire ("PSNH" or the "Company") hereby requests rehearing of Order No. 25,158 dated October 15, 2010. In particular, PSNH requests that the Commission reconsider its denials of confidential treatment and the issuance of a protective order for certain confidential, commercial, or financial information contained in the Power Purchase Agreement ("PPA") entered into by and between PSNH and Laidlaw Berlin BioPower, LLC ("LBB") dated June 8, 2010. Under RSA 541:3, the Commission may grant rehearing or reconsideration when the motion states good reason for such relief. Good reason may be shown by identifying specific matters that were either "overlooked or mistakenly conceived" by the deciding tribunal. *Dumais v. State*, 118 N.H. 309, 311 (1978). This Motion for Rehearing is premised upon both factual and legal grounds. PSNH believes that the Commission misunderstood (mistakenly conceived) certain pre-filed testimony presented by PSNH, and that such misunderstanding resulted in the Commission's denial of confidential treatment and the issuance of a protective order. Moreover, the Commission's determination is inconsistent with its own past practice and precedent, and that of a sister agency, creating considerable uncertainty and risk for all the state's regulated utilities in the future and potentially higher future costs for customers.

In support of this Motion, PSNH states as follows:

1. In 2007 N.H. Laws, Chapter 26, the Legislature enacted the state's "Electric Renewable Portfolio Standard" ("RPS"), codified as RSA Chapter 362-F. That law found that it is "in the

public interest to stimulate investment in low emission renewable energy generation technologies in New England and, in particular, New Hampshire, whether at new or existing facilities.”¹ To further this public interest finding, the Legislature created a series of escalating annual requirements beginning in 2008 and continuing to increase until 2025, mandating that the electricity sold to retail customers within the state be composed of certain percentages of various types, or classes, of renewable energy.² All “providers of electricity” – meaning an electric distribution company providing default service or an electricity supplier as defined in RSA 374-F:2,II – must comply with this renewable portfolio standard requirement.³ In 2025, the RPS requires 23.8% of the energy sold to be from designated renewable sources.⁴

2. The RPS law created four classes of renewable generation. Of these classes, so called “Class I” will ultimately be the largest, with a requirement that by 2025, 16% of the electricity sold to retail consumers be from Class I renewable sources. Class I generation includes, *inter alia*, “eligible biomass technologies”⁵ that began operating after January 1, 2006.⁶

3. PSNH is an electric distribution company, and is a provider of electricity that must comply with the requirements of the RPS.

4. To comply with the RPS law, PSNH negotiated with, and ultimately entered into a Power Purchase Agreement (the “PPA”) with Laidlaw Berlin BioPower, LLC. That PPA was executed on June 8, 2010, following comprehensive, detailed, and lengthy arms-length negotiations. That agreement would provide PSNH with, *inter alia*, Class I RECs necessary to comply with the RPS law.

¹ RSA 362-F:1.

² In lieu of meeting the portfolio requirements of RSA 362-F:3, a seller may make alternative compliance payments to the Commission, pursuant to RSA 362-F:10,II.

³ In essence, all sellers of electricity are subject to the RPS requirement, except for the state’s five municipal electric providers.

⁴ The 23.8% requirement in 2025 substantially fulfills Governor Lynch’s commitment of New Hampshire meeting 25 percent of the state’s energy needs from renewable energy resources by 2025. *See* 2007 N.H. Laws, 26:1,VI.

⁵ “Eligible biomass technologies” is defined in RSA 362-F:2,VIII.

⁶ RSA 362-F:4,I.

5. The RPS law provides a mechanism for the state's electric distribution companies to enter into multi-year purchase agreements with renewable energy sources.⁷ An electric distribution company may request that the Commission find such a power purchase agreement to be in the public interest. The RPS law sets forth various factors to consider in balancing the public interest.⁸

6. On July 26, 2010, PSNH petitioned the Commission for approval of the Laidlaw PPA pursuant to RSA 362-F:9. In that Petition, at ¶4, PSNH stated that:

Many terms of the PPA are the product of confidential negotiations and include confidential, commercial, financial information as set forth in RSA 91-A:5,IV. Copies of the PPA and the testimony of Mr. Labrecque are being filed in redacted form with this Petition. Unredacted copies of the PPA and that testimony are being filed separately along with a Motion for Confidential Treatment Pursuant to RSA Chapter 91-A and N.H. Code Admin. Rules Puc § 203.08.

7. PSNH took great pains to provide to the public the maximum amount of information that it reasonably could.⁹ Instead of withholding the PPA in its entirety, PSNH surgically redacted only those portions of the PPA that could not, and should not, be made available to other competitors participating in the electric energy market.¹⁰

8. As discussed in PSNH's Petition, PSNH did indeed contemporaneously file a "Motion for Confidential Treatment Pursuant to RSA Chapter 91-A and N.H. Code Admin. Rules Puc § 203.08." That Motion for Confidential Treatment provided the Commission with detailed factual and legal bases substantiating that the information identified as confidential met the requirements of RSA 91-A:5,IV, and was consistent with the decisions of the New Hampshire Supreme Court

⁷ RSA 362-F:9,I.

⁸ RSA 362-F:9,II.

⁹ Recall that during the September 29, 2010 prehearing conference, Attorney Hatfield, the state's Consumer Advocate noted, "With respect to the Motion for Confidential Treatment, we do not have a position. We would like to note our appreciation for how PSNH redacted Mr. Labrecque's testimony. It looks to us like they took great care in just trying to redact the specific pricing information, and we do appreciate that." Transcript, p. 63.

¹⁰ As PSNH noted during the September 29, 2010 prehearing conference in this proceeding, it is not our retail customers from whom we need to withhold the confidential information contained in the PPA; it is the competitors in the energy market that should not be able to access that information. Transcript, 9/29/10, pp. 78-79.

and the precedent established by this Commission in innumerable prior cases for confidential treatment via issuance of a protective order.

9. During the September 29, 2010, prehearing conference, objections to PSNH's Motion for Confidential Treatment were entered by various parties ultimately granted status as intervenors. Clean Power Development, a direct competitor to Laidlaw and a developer in the competitive energy market, objected in part, "Because, as an intervenor with rights to litigate our issues, we can't operate in the dark trying to guess what's in the confidential agreements."¹¹ The various existing Wood IPPs, also direct competitors to Laidlaw, and participants in the energy market that have entered into a variety of sales arrangements with PSNH over the years, objected as well, noting, "confidentiality is to protect this information from the public, not from participants."¹² Concord Steam, also a direct competitor to Laidlaw and a developer in the competitive energy market, objected to confidential treatment of the pricing information, stating, "that it would be in the interest of those of us who intervened to know where Public Service and Laidlaw have established their baseline cost of wood and how that is being recovered."¹³

10. Not one of the objections dealt with the primary purpose for this proceeding as set forth in the RPS law: to determine whether the PPA is in the public interest. The purpose of this proceeding is not to determine whether the PPA is in the interest of direct competitors. Not one of the objecting parties cited to any statute, any Supreme Court decision, nor any past precedent of this Commission in support of their objection – despite having over two months' time between PSNH's filing of the Motion for Confidential Treatment and the date of the prehearing conference to find such precedent.

11. The common basis for the competitor-intervenors' objections to the Motion for Confidential Treatment was that as competitors in the deregulated energy market, they needed access to their competitor's confidential information in order to be able to impede that competition.¹⁴

¹¹ Transcript, p. 35.

¹² Transcript, p. 37.

¹³ Transcript, p. 53.

¹⁴ PSNH questions how such access to a competitor's confidential information is consistent with the state's electric utility restructuring law, RSA Chapter 374-F, which includes as one of the

12. On October 15, 2010, the Commission issued its “Prehearing Conference Order,” Order No. 25,158. In that Order, the Commission held, “that PSNH's motion for protective order is DENIED.”¹⁵ The Commission explained that it based its denial upon the three-step analysis described by the Supreme Court in *Lamy v. New Hampshire Public Utilities Commission*, 152 N.H. 106 (2005). As part of that analysis, the Commission determined that the information redacted by PSNH was indeed confidential: “Because this information is a product of confidential business negotiations between PSNH and Laidlaw and has not otherwise been publicly disclosed, we agree that it is confidential, commercial, or financial information in which the companies have a privacy stake.”¹⁶ In the second-step of the *Lamy* analysis, the Commission noted, “We find that the disclosure of this information is central to the public’s understanding of how the Commission evaluates whether this particular PPA meets the public interest standard as articulated in RSA 362-F:9, II.”¹⁷ The Commission then described the concluding step of the *Lamy* analysis: “Finally, we must determine whether the harm to the Company in disclosing the pricing details outweighs the benefits of disclosure to the public.”¹⁸ The Commission summarized:

PSNH states that the pricing terms are a product of confidential negotiations and that the disclosure of the pricing terms could affect PSNH and Laidlaw’s ability to negotiate such contracts in the future. 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.¹⁹

restructuring policy principles, “VII. Full and Fair Competition. Choice for retail customers cannot exist without a range of viable suppliers. The rules that govern market activity should apply to all buyers and sellers in a fair and consistent manner in order to ensure a fully competitive market.” RSA 374-F:3,VII.

¹⁵ With the exception of the value of property to be protected by title insurance. Order, *slip op.* at 15.

¹⁶ Order, *slip op.* at 12.

¹⁷ *Id.*

¹⁸ PSNH feels that the Commission has not accurately described this final step. Any harm that will come about as a result of releasing the confidential information would not accrue to PSNH; it is PSNH’s retail customers that will be harmed. As PSNH explained during the prehearing conference, “It is important to remember that, as with all such other power purchase agreements, whether they are with renewable energy plants or whether they’re from more traditional fossil, hydro or nuclear sources, PSNH will make absolutely no profit as a result of this agreement. PSNH has entered into this PPA to comply with the legal requirements under the RPS law. And, we’ve done it in a manner and with a deal that we believe provides significant benefits and protections for customers and to the state as a whole.” Transcript, p. 11-12.

¹⁹ *Id.* at 13.

Based upon its balancing of interests and harms, the Commission rejected PSNH's Motion for Confidential Treatment and directed PSNH to promptly provide the confidential information to the intervenors and the public at large.²⁰

13. In the Order, the only matter of record identified as a consideration in the final balancing step of the *Lamy* process was the prefiled testimony of PSNH's President Gary Long. "Indeed, in this case in his prefiled testimony (at p. 5) PSNH President Gary Long states that '[a]t this time, PSNH's interest in entering into additional long term power purchase agreements is highly limited.'"²¹ Directly after this quoted section the Commission states, "We, therefore, deny the motion for confidential treatment... ." The Commission appears to have distinguished the present case from past precedent based in great part upon its impression that there is little likelihood of harm to PSNH or its customers if the confidential information was not protected from disclosure, because Mr. Long said, "PSNH's interest in entering into additional long term power purchase agreements is highly limited." Unfortunately, the Commission has misinterpreted Mr. Long's testimony.²²

14. When 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. Mr. Long did not intend his testimony to mean that PSNH would not be in the competitive energy market for power purchase agreements at all. In his affidavit submitted to the Commission on October 19, 2010, Mr. Long explains that his prefiled testimony discussing PSNH's interest in additional long term power purchase agreements "was intended to relate only to additional long term power purchase agreements for PSNH to comply with New Hampshire's Renewable Portfolio Standards Law,

²⁰ *Id.* at 14.

²¹ *Id.*

²² PSNH has subsequently admitted that Mr. Long's testimony could have been drafted more precisely to prevent such misinterpretation. See PSNH letter dated October 19, 2010.

RSA Chapter 362-F for Class I, the Class in which the Laidlaw project is expected to qualify.”²³

Mr. Long continues in his affidavit:

I had intended the question following the above-referenced one to provide that additional detail; in hindsight, my original testimony should not have relied upon the subsequent question to clarify my intent.

If asked that same question today, (i.e., “How does this compare with PSNH’s own interest in entering into additional long term power purchase agreement?”), my response would be:

“At this time, and assuming the contract with LBB is approved, PSNH’s interest in entering into additional long term power purchase agreements to fulfill the Company’s Class I Renewable Portfolio Standard obligation is highly limited.”

15. The misinterpretation of Mr. Long’s testimony is evidenced by events that preceded the Commission’s October 15 Order. 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 publicly 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.”²⁴ 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.”²⁵ Clearly, such on-going discussions between PSNH and HQ Hydro Renewable Energy demonstrate that Mr. Long’s testimony has been misinterpreted.²⁶

16. 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 not only have a chilling effect on those negotiations, but would indeed “affect PSNH[’s]...ability to

²³ A copy of Mr. Long’s affidavit of October 19, 2010, is attached hereto as Attachment 1.

²⁴ The Northern Pass media release 10-002, October 12, 2010, available at <http://northernpass.us/TheNorthernPassAnnouncementPressRelease101210.pdf>

²⁵ 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.

²⁶ 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).

negotiate such contracts in the future.”²⁷ Those on-going discussions between PSNH and HQ Hydro Renewable Energy were known to Mr. Long at the time he submitted his prefiled testimony, and they demonstrate that Mr. Long’s testimony has been mistakenly conceived. If a deal could be reached in a regulatory environment where the seller cannot rely on confidential, commercial, financial terms being protected from disclosure, the likelihood of achieving the best result for customers would be lessened, lest that deal become a new benchmark the seller becomes saddled with going forward. The Commission has previously held, “If public disclosure of confidential, commercial or financial information would harm the competitive position of the person from whom the information was obtained, the balance would tend to tip in favor of non-disclosure.” *Re National Grid plc*, 92 NH PUC 279, 326 (2007). Both Laidlaw and PSNH’s retail customers would be harmed by the release of the confidential PPA information. Similarly, the Commission has held, “The information in the documents is financially or commercially sensitive in the sense that its public disclosure would reveal information that could place Ensio Resources at a competitive disadvantage relative to other firms that purchase end products of coal-burning processes and PSNH at a competitive disadvantage in future negotiations with end-product purchasers.” *Re Public Service Company of New Hampshire*, 84 NHPUC 484, 485 (1999). The Commission has also noted that protection of similar confidential information “helps produce lower rates.”²⁸

17. Moreover, the Commission’s approval of the Laidlaw PPA is not assured. If the Laidlaw PPA is ultimately rejected by the Commission, and the confidential information contained in the Laidlaw PPA is not protected, PSNH would immediately be back in the RPS market with the details of the rejected Laidlaw PPA available to every supplier. Again, any harm that occurs as a result accrues to PSNH’s retail customers, not to PSNH itself. That potential eventuality is also inconsistent with the Commission’s basis for denial of the confidentiality motion.

18. The confidential treatment of matters relating to the Laidlaw PPA was recently considered by the New Hampshire Site Evaluation Committee (“NHSEC”). The NHSEC is subject to precisely the same statutes and judicial precedents regarding the treatment of

²⁷ Order, *slip op.* at 13.

²⁸ *Re Public Service Company of New Hampshire*, Order No. 25,061, December 31, 2009, *slip op.* at 27.

confidential, commercial, financial information. In its Docket No. 2009-02, the NHSEC reviewed and approved the “Application of Laidlaw Berlin BioPower, LLC, for a Certificate of Site and Facility for a 70MW Biomass Fueled Energy Facility in Berlin, Coös County, New Hampshire.” Utilizing the identical standards required of this Commission, the NHSEC, like this Commission, found that the information for which protective treatment was sought was indeed confidential, commercial, or financial information per RSA 91-A:5,IV:

The unredacted version of the PPA will remain confidential because it contains information which is exempt from disclosure under RSA 91-A: 5, IV. The PPA contains information that qualifies as confidential, commercial and financial information. Contracts containing important commercial and financial terms clearly fit within the exemption to the Right to Know law.²⁹

However, when it came to the balancing test to determine whether the records should be protected or if the public’s interest in disclosure is outweighed by the Applicant’s interests in protecting its confidential, financial and commercial information, the NHSEC came to a different conclusion than this Commission:

In this case, the information contained within the unredacted PPA is precisely the type of information which, if made publically available, could cause commercial damage to the Applicant’s business relationships and could put the Applicant at a competitive disadvantage in its industry. Therefore, the unredacted PPA shall be considered by the Committee as confidential and shall not be publically disclosed without a further order from the Committee.³⁰

More recently, the NHSEC was asked by Laidlaw to allow release of the confidential transcripts made during the Laidlaw proceeding to this Commission, the Commission’s Staff, and the Office of the Consumer Advocate. By an Order dated October 21, 2010, the NHSEC denied Laidlaw’s request.³¹ The Commission may wish to review the NHSEC’s initial, and more recent, acts protecting the confidential information from disclosure, when considering this Motion for Rehearing.

19. The Commission has previously dealt with the confidentiality issue in the context of other PURPA qualifying facilities. In *Re Public Service Company of New Hampshire*, 86 NH

²⁹ NHSEC Docket No. 2009-02, “Order on Pending Motions,” August 19, 2010, *slip op.* at 2.

³⁰ *Id.* at 3.

³¹ A copy of the NHSEC’s October 21, 2010, “Order on Applicant’s Expedited Motion for Limited Release of Confidential Transcripts to the New Hampshire Public Utilities Commission Docket No. 10-195” is attached hereto as Attachment 2.

PUC 558 (2001), the Commission considered whether confidential treatment should be afforded to the Execution Agreements and two accompanying exhibits that detailed the restructuring of the existing power supply arrangements between PSNH and Hemphill Power and Light Company, Whitefield Power and Light Company, and Bio-Energy Corporation. In granting such protective treatment, the Commission stated:

We note that the public has a significant interest in disclosure of the documents in question — which relate directly to the level of public confidence that the process of determining and allocating a just and reasonable share of savings produced by renegotiated power purchase agreements, pursuant to RSA 369-B, is conducted fairly and rigorously. Nevertheless, the positions of PSNH and EMMT are persuasive. Public disclosure of these documents would create a substantial likelihood of competitive harm to both companies — harm that could, with regard to PSNH, negatively impact ratepayers by reducing stranded cost offsets in future IPP renegotiations. In these circumstances, the companies' interest in non-disclosure clearly outweighs the public's interest in obtaining access to the documents.³²

In the instant case, PSNH similarly faces harm that could negatively impact ratepayers, as potential negotiating partners shy away from providing their best deals, lest they be revealed by future Commission decisions rejecting protective treatment for information that is undisputedly confidential, commercial, or financial in nature.

20. Turning to the competitor-intervenors' objections to PSNH's Motion for Confidential Treatment, the New Hampshire Supreme Court has held that “[I]njury resulting from competition is rarely classified as a legal harm but rather is deemed a natural risk in our free enterprise economy.” *Weeks Restaurant Corp. v. City of Dover*, 119 N.H. 541, 545 (1979) (quotation omitted).” *Nautilus of Exeter v. Town of Exeter*, 139 N.H. 450, 452 (1995). Due to the lack of a legal harm to themselves, the competitor-intervenors complaint must be that access to another competitor's confidential information is necessary to protect the public at large. Data requests seeking confidential, commercial or financial information such as: copies of all contracts for a term in excess of 3 years entered into by PSNH for the purchase of energy capacity or RECs;³³ copies of all contracts regarding purchase of biomass fuel by PSNH from 2007 to present;³⁴ and, copies of all calculations, spreadsheets, proformas, evaluations, analyses

³² *Re Public Service Company of New Hampshire*, 86 NH PUC 558 564 (2001)

³³ Wood IPPs data request set 2 to PSNH, question 10.

³⁴ Concord Steam data request set 1 to PSNH, question 4.

and studies of or for the expected cash flows of the Laidlaw facility for the term of the PPA and for each year of said term³⁵ are illustrative of the true motivations of the competitor parties that were granted intervenor status in this proceeding. Their interests are not allied with determining the public interest. As such, their complaints, if given any credence, certainly do not shift the balance away from protecting the confidential information submitted to the Commission.³⁶

21. Many of these same Wood IPPs were the beneficiaries in Docket No. DR 94-300 of the same confidential treatment that they now assail. In that proceeding, confidential treatment was granted by the Commission for the Settlement Agreements and Wood Project Power Purchase Contracts signed by PSNH with Bridgewater Power Company, Bio-Energy Corporation, Whitefield Power & Light Company and Hemphill Power & Light Company.³⁷ The contents and nature of those agreements is not substantially different from the Laidlaw PPA that is the subject of the instant docket.

22. More recently, when reviewing similar power purchase agreements entered into by PSNH to meet the requirements of the RPS, the Commission stated:

Having reviewed the detailed terms and conditions of the power purchase agreements contained in the confidential record, we have determined that the release of such information to the public could put PSNH, as well as the plant owners, at a competitive disadvantage in negotiating similar agreements with other parties in the future. As to such information, in balancing the interests for and against public disclosure of the information for which confidential treatment is sought, we are persuaded on the basis of the record in this docket that the interests of PSNH, and ultimately its ratepayers, as well as the legitimate interests

³⁵ Wood IPPs data request set 2 to Laidlaw, question 10.

³⁶ As noted during the prehearing conference (Transcript, p. 76), the various “Wood-Fired Plants” intervenors or their predecessors previously sought an injunction in federal court to block this Commission’s ability to order a disclosure of their business and financial data. *Bristol Energy Corporation, d/b/a Alexandria Power; Associates, Bio-Energy Corporation; Bridgewater Power Company, L.P.; Hemphill Power and Light Company; Pinetree Power, Inc.; Pinetree Power--Tamworth, Inc.; Timco, Inc.; and Whitefield Power and Light Company v. New Hampshire Public Utilities Commission*, 13 F.3d 471 (1st Cir. 1994). In their Brief filed with the U.S. Court of Appeals, the Wood IPPs deemed the Commission’s data requests “intrusive inquiries” that “seek the very business plans for plaintiffs’ facilities, among other sensitive business information.” Joint Brief for Appellants and Intervenors-Appellants, September 9, 1993. For them to now claim that a competitor’s confidential information should not only be denied confidential treatment, but be disgorged to them, is disingenuous.

³⁷ *Re Public Service Company of New Hampshire*, 81 NH PUC 382, 383 (1996).

of third parties in nondisclosure outweigh the public's interest in obtaining access to the information.³⁸

Once again, the “plant owners” referenced by the Commission in the quoted decision are two of the Wood-Fired IPP intervenors in this proceeding which now challenge the propriety and necessity of protecting such information: Pinetree Power, Inc. and Pinetree Power-Tamworth, Inc.

23. On every other occasion that the Commission has had to review power purchase agreements pursuant to RSA 362-F:9, the Commission has determined that the issuance of a protective order was necessary and proper.³⁹ The Commission has also routinely issued protective orders in past cases involving power purchase agreements and other contracts involving energy purchases outside of RSA Chapter 362-F.⁴⁰ The Commission’s unexpected about-face in this proceeding creates uncertainty, risk, and resulting higher costs going forward for the utilities of this state, their commercial partners, and ultimately for the state’s residents who will bear those higher costs.⁴¹

³⁸ *Re Public Service Company of New Hampshire*, Docket No. DE 01-175, Order No. 24,839, April 4, 2008, *slip op.* at 9-10. Confidential treatment was also granted for identical confidential, commercial, or financial information contained in the Power Purchase Agreement and Renewable Energy Certificate Option Agreement entered into between PSNH and Lempster Wind, LLC in Docket No. DE 08-077. *See* Order No. 24,965, May 1, 2009, at 2.

³⁹ *Id.*.

⁴⁰ *See, e.g., Re Public Service Company of New Hampshire*, 80 NH PUC 311 (1995) (Contract forms representing draft agreements between PSNH and Bridgewater Power Company, L.P. were provided confidential treatment); *Re Public Service Company of New Hampshire*, 86 NH PUC 558 (2001) (Documents detailing detail the restructuring of the existing power supply arrangements between PSNH and Hemphill Power and Light Company, Whitefield Power and Light Company, and Bio-Energy Corporation were provided confidential treatment.); *Re Unutil Energy Systems, Inc.*, 93 NH PUC 148, 153 (2008) (Regarding confidential treatment of power supply agreements (PSAs), “We do not find the public's interest in review of this financial, commercially sensitive information sufficient to outweigh the benefit derived from maintaining the confidentiality of such information insofar as it can redound to customers through lower rates.” The Commission also noted that it had previously provided protective treatment to other PSAs. *See Granite State Electric Company*, Order No. 24,412 (December 22, 2004) at 8 (accorded protective treatment over power supply contract for 2005 default service rates); *Granite State Electric Company*, Order No. 24,318 (April 30, 2004) at 8 (accorded protective treatment over power supply contract for 2004 default service rates).

⁴¹ *Re Public Service Company of New Hampshire*, Order No. 25,061, December 31, 2009 (PSNH’s internal power purchase guidance, including the 2008 memorandum regarding power purchases for 2010; revenue requirements for Newington Station; power supply and coal supply contracts, including the over-market calculation for the 2008 strips of energy purchased for 2010 and mark-to-market information on PSNH power purchases; specific information regarding planned maintenance outages for PSNH generating units; and price information regarding PSNH’s purchases and sales of RECs provided confidential treatment, “...given that confidentiality helps produce lower rates.”

WHEREFORE, PSNH respectfully requests that the Commission grant rehearing of its denial of confidential treatment of the PPA's confidential, commercial, or financial information, and issue a protective order as previously requested in PSNH's "Motion for Confidential Treatment Pursuant to RSA Chapter 91-A and N.H. Code Admin. Rules Puc § 203.08." of July 26, 2010.

Respectfully submitted this 22nd day of October, 2010.

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

By:  _____

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CERTIFICATE OF SERVICE

I hereby certify that I served an electronic copy of this filing with the office of the consumer advocate pursuant to Rule Puc 203.11 (c)



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Attachment 1

THE 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

Affidavit of Gary A. Long

I, Gary A. Long, being first duly sworn and put upon oath, do hereby state:

I am Gary A. Long, President and Chief Operating Officer of Public Service Company of New Hampshire ("PSNH").

On July 26, 2010, my prefiled testimony was submitted in the above-captioned proceeding to support the review and approval of a Power Purchase Agreement entered into by and between PSNH and Laidlaw Berlin BioPower, LLC.

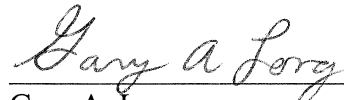
In that prefiled testimony, at page 5, line 14, the question "How does this compare with PSNH's own interest in entering into additional long term power purchase agreement[s]?" was posed to me. My response, beginning at line 16 of that same page was "At this time, PSNH's interest in entering into additional long term power purchase agreements is highly limited."

That statement was intended to relate only to additional long term power purchase agreements for PSNH to comply with New Hampshire's Renewable Portfolio Standards Law, RSA Chapter 362-F for Class 1, the Class in which the Laidlaw project is expected to qualify.

I had intended the question following the above-referenced one to provide that additional detail; in hindsight, my original testimony should not have relied upon the subsequent question to clarify my intent.

If asked that same question today, (i.e., "How does this compare with PSNH's own interest in entering into additional long term power purchase agreement?"), my response would be:

"At this time, and assuming the contract with LBB is approved, PSNH's interest in entering into additional long term power purchase agreements to fulfill the Company's Class 1 Renewable Portfolio Standard obligation is highly limited."



Gary A. Long

SUBSCRIBED AND SWORN TO before me, a Notary Public for the State of New Hampshire, this 19th day of October, 2010, by Gary A. Long, an individual whose identity is personally known to me.

ANNETTE C. MAYO, Notary Public
My Commission Expires July 14, 2015



Notary Public

STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE
Docket No. 2009-02

Application of Laidlaw Berlin BioPower, LLC, for a Certificate of Site and Facility for a 70MW Biomass Fueled Energy Facility in Berlin, Coos County, New Hampshire

October 21, 2010

**ORDER ON APPLICANT'S EXPEDITED MOTION FOR LIMITED RELEASE
OF CONFIDENTIAL TRANSCRIPTS TO THE NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION DOCKET NO. 10-195**

On December 15, 2009, Laidlaw Berlin BioPower, LLC (Applicant) filed an Application for a Certificate of Site and Facility in order to site, construct, and operate a 70 megawatt biomass fueled energy generating facility in Berlin, New Hampshire, at the site of the former Fraser Paper Mill.

During the course of the proceedings before the Subcommittee, the Applicant filed a number of financial, commercial, and confidential documents. See, Exhibits 38, 38A, 39, 40, 41, 42, 43, 56, 61, 62, 63, 66 and 76A (Exhibits(s)). With regard to each Exhibit, the Applicant represented that the contents were financial, commercial or otherwise confidential information and exempt from the public disclosure requirements of the Right to Know law. See, RSA 91-A:5, IV. With respect to each Exhibit, the Subcommittee found that the Exhibit contained financial, commercial or confidential information. Additionally, with respect to each of the non-public Exhibits, the Subcommittee determined that the public interest in disclosure of the information contained in the Exhibit was outweighed by the likelihood of substantial harm to the competitive position of the Applicant in its industry. Therefore, the Subcommittee granted confidential treatment to each of the aforementioned Exhibits and they were not disclosed to the public.

During the course of the adjudicatory hearings in this matter, the Applicant chose to provide testimony pertaining to the confidential Exhibits. The Applicant asked that the Subcommittee permit testimony about the confidential Exhibits in non-public session. In each case, a Motion was made, a roll call vote was taken, and the Subcommittee voted affirmatively to enter into a non-public session for the purpose of inquiring into the confidential Exhibits. A verbatim transcript of each non-public session was made. At the conclusion of each non-public session, a motion was made to maintain the transcripts of the non-public sessions under seal. In each case, the Subcommittee voted unanimously to seal the transcripts of the non-public sessions.

The Applicant now requests that the Subcommittee release the transcripts of the non-public sessions. However, the Applicant does not request that the transcripts be released to the public. The Applicant requests that the transcripts of the non-public sessions of the Subcommittee be released only to the New Hampshire Public Utilities

Commissioners, the New Hampshire Public Utilities Commission staff, and the Office of the Consumer Advocate.

The decisions to allow confidential treatment of the Exhibits and to discuss the Exhibits in non-public sessions were undertaken only after serious consideration of the nature of the Exhibits. The decisions to exempt the Exhibits from public disclosure were made only after the public's interest in the documents was weighed against the harm that might occur to the Applicant if disclosed publicly. See, Lamy v. Public Utilities Commission, 152 NH 106, (2005). The Subcommittee did not take this process lightly and acted in good faith to limit the extent of the non-public sessions. Decisions to exempt records and to conduct non-public sessions are serious acts. The motion filed by the Applicant seeking limited disclosure of the transcripts of the non-public sessions undermines the integrity of the process. Moreover, the Applicant has not cited to any statutory provision in RSA 91-A or elsewhere that would authorize the Site Evaluation Committee to release the transcripts of non-public sessions on a piecemeal basis to limited parties. Likewise, the Applicant does not identify any authority for the Site Evaluation Committee to enforce a limited disclosure order.

The process of exempting confidential Exhibits and going into non-public session is not a process that is undertaken for the convenience of the Applicant, despite the fact that the Applicant has a major interest in that decision. The purpose of deeming Exhibits to be confidential and non-public, and the purpose of entering into non-public session in order to inquire further into such documents, concerns the right of the public to know the contents of Exhibits and whether or not the public interest in such knowledge is outweighed by the interests of the Applicant. The New Hampshire Supreme Court has stated: "Information that is subject to disclosure under the Right-to-Know Law "belongs to citizens to do with as they choose. . . . As a general rule, if the information is subject to disclosure, it belongs to all." Lamy v. Public Utilities Commission, 152 NH 106, 11 (2005) *quoting* National Archives and Records v. Favish, 541 U.S. 157, 124 S. Ct. 1570, 1580, 158 L. Ed. 2d 319 (2004). To date, the Applicant has not informed the Site Evaluation Committee that circumstances pertaining to the issues that were before the Subcommittee in this proceeding have now changed such that the financial, commercial or confidential information contained in the confidential Exhibits or the transcripts of the non-public sessions regarding those confidential Exhibits no longer qualifies for exemption from disclosure under RSA 91-A. The non-public sessions in which further inquiry was made regarding those Exhibits were all premised on the rulings made by the Site Evaluation Committee which found that the Exhibits were entitled to exemption from public disclosure under RSA 91-A.

For the reasons stated, I do not find that there has been sufficient cause expressed by the Applicant to permit the limited disclosure of the transcripts of the non-public sessions. Of course, the Applicant may determine that certain of its own documents that it asserted to be confidential under RSA 91-A for purposes of this proceeding are not ones for which it would assert a claim of confidentiality in a different proceeding before a different body. Thus, because the underlying documents remain the property of the Applicant, there would be no impediment to the Applicant taking a

copy of a document that was submitted in this proceeding by the Applicant and providing it to the Public Utilities Commission or other parties, provided the copy so provided or submitted to such other party or parties does not bear any Exhibit numbers or markings from this proceeding before the Site Evaluation Committee. However, the transcripts of the non-public sessions of the Subcommittee of the Site Evaluation Committee in this proceeding will not be released on a limited basis. If the Applicant were to make a showing to the Site Evaluation Committee that all of the Exhibits previously found to be exempt from disclosure under RSA 91-A no longer should be treated as confidential documents, the Site Evaluation Committee would then consider whether to allow disclosure of all such marked Exhibits and the transcripts of the non-public sessions to the public.

Having considered the expedited Motion filed by the Applicant, it is hereby ordered that the Motion is DENIED and the transcripts of the non-public sessions held by the Subcommittee shall not be released on the limited basis requested in said Motion.

SO ORDERED.

Date: October 21, 2010



Thomas S. Burack, Chair
New Hampshire Site Evaluation Committee