

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

**LAIDLAW BERLIN BIOPOWER, LLC'S RESPONSE
TO CONCORD STEAM CORPORATION'S OBJECTION
TO LAIDLAW'S MOTION FOR CONFIDENTIAL TREATMENT**

Intervenor Laidlaw Berlin BioPower, LLC ("LBB") provides the following response to Concord Steam Corporation's ("CSC") Objection to Laidlaw's Motion for Confidential Treatment of its Pro Forma.

1. CSC argues that, per Rule Puc 203.08 (j), as a party to this proceeding, it has a right to access to LBB's confidential information. CSC's reading of the Commission's rule is incorrect. Rule Puc 203.08(h) clearly gives the Commission the authority to limit the release of information it determines is confidential:

If the commission grants a motion for confidential treatment, the confidential information shall not be subject to public *disclosure and the document shall be treated according to such conditions as the commission determines are necessary to preserve such confidentiality.*

(Empahsis added.)

Moreover, CSC's reading of Rule Puc 203.08 itself is incorrect. That rule does not state that all parties to a proceeding are entitled to receive all confidential information. What it does say is that those parties who are entitled to receive such information must preserve its confidentiality.

2. CSC further claims that “the confidential information is at the center” of this proceeding. CSC Motion at Page 1. It then claims that public benefits in the interest of disclosure outweigh Laidlaw’s interest in having the document protected. *Id.* at 2.

3. CSC’s Objection underscores the concerns that both LBB and PSNH initially expressed regarding permitting competitors to intervene in this process. The focus of this proceeding is the PPA and whether it is in the public interest under RSA 362-F:10, II - - not whether the PPA is in the best interests of LBB’s competitors. Positions that LBB may have taken, or understandings LBB may have had during the course of the negotiations leading up to the execution of the final PPA have no bearing on the central question in this proceeding.

4. CSC’s intervention here does not vest it with independent, due process rights to obtain whatever information it wants from another intervenor who is also a competitor. *Re: Public Service Company of New Hampshire*, 89 NH PUC 226 (2004). Providing one competitor with the highly sensitive business information of another competitor is not “within the bounds of what is reasonable under the circumstances.” *See September 29, 2010 Prehearing Transcript* at 111. In *Re New England Telephone and Telegraph Company dba Bell Atlantic*, 83 NH PUC 84 (1998), the Commission recognized the need to keep confidential, commercial or financial information away from competitors. In that case, the Commission agreed that competitors of Bell Atlantic were not entitled to certain information, as such information that “would provide competitors with an unfair competitive advantage in developing marketing strategies.” 83 NH PUC at 85; *see also Re Concord Electric Company*, 83 NH PUC 407, 408 (1998) (where the Commission protected “sensitive commercial information in a competitive market”).

5. There is no question that the balancing test in *Lamy v. NH PUC*, 152 N.H. 106, 205 (2005) can be managed in such a way to ensure that a proper inquiry is conducted here by

the Commission without creating the chilling precedent whereby one intervenor who has entered into a contract with a publicly regulated utility will suddenly have to share with its competitors, who happen to be other intervenors, its most sensitive business information. If competitors were permitted to use the regulatory process as a tool to obtain such information from other competitors, it would have the perverse effect of chilling the development of renewable energy supplies rather than encouraging them as RSA 362-F as intended.

6. As PSNH also noted in its October 22, 2010 Motion for Rehearing, parties in positions very similar to that of CSC (including parties intervening in this proceeding) have, historically, fought vigorously to protect the same type of sensitive confidential information that LBB seeks to protect here. *See* PSNH Motion at 11. LBB asks for nothing more here than to be accorded its due process and equal protection rights, and to be treated the same way those parties have been treated in similar circumstances.

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

- A. Grant its Motion for Confidential Treatment; and
- B. Grant such other and further relief as may be just and equitable.

Respectfully submitted,

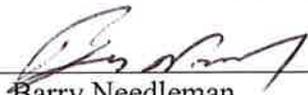
Laidlaw Berlin BioPower, LLC

By Its Attorneys,

McLANE, GRAF, RAULERSON & MIDDLETON,
PROFESSIONAL ASSOCIATION

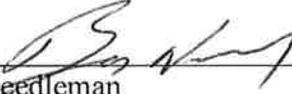
Date: October 26, 2010

By: _____


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Certificate of Service

I hereby certify that on this 26th 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