

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

In re: Petition for Approval of PPA with Laidlaw Berlin BioPower, LLC

DE 10-195

MOTION TO COMPEL

NOW COMES Concord Steam Corporation, Intervenor in the above-entitled matter and moves to compel Laidlaw Berlin BioPower, LLC (“Laidlaw”) to answer its First Set of Data Requests dated and served October 21, 2010. In support of its Motion Concord Steam Corporation says as follows:

1. On July 26, 2010, Public Service Company of New Hampshire (“PSNH”) filed a Petition for Approval of a Power Purchase Agreement (“PPA”) with Laidlaw for the acquisition of Energy Capacity and Renewable Energy Certificates (“RECs”). The Petition requests, *inter alia*, that the Commission approve “full cost recovery of the rates, terms and conditions of the PPA, including above-market energy payments that will be applied to the purchase of the Laidlaw facility over a twenty year period”.
2. Concord Steam was granted Intervenor status at the Prehearing Conference on September 29, 2010.
3. At the Prehearing Conference, PSNH and Laidlaw sought an expedited Procedural Schedule with a Final Hearing to be held on December 28, 2010. At the Prehearing Conference all the parties, including the Commission, expressed concern about how discovery disputes might impact such a truncated schedule.
4. In response to the concerns raised about the possible problems that might arise during discovery, counsel for Laidlaw stated: “...we would not object -- we would not

assert a blanket objection to discovery requests directed at Laidlaw.” Transcript
September 29, 2010, page 111.

5. On October 21, 2010, pursuant to the Procedural Schedule established at the request of Laidlaw, Concord Steam submitted its First Set of Data Requests to Laidlaw, a copy of which is attached as Exhibit A.

6. On October 25, 2010, the last day of discovery, Laidlaw responded to all 18 of Concord Steam’s Requests with the following:

“Laidlaw objects to this data request on the basis that it is vague, overbroad, unduly burdensome, and not reasonable calculated to lead to the discovery of information that is relevant in this proceeding. This proceeding is about whether the PPA is in the public interest under RSA 362-F:10, II. Laidlaw’s positions during the period leading up to execution of the PPA and/or its understanding of various market or other information has no bearing on that question.

The Commission has previously ruled that an intervenor who has not filed testimony is not subject to discovery. *Re Public Service Company of New Hampshire*, 89 NH PUC 226 (2004). Laidlaw has not filed any testimony but nevertheless has agreed to provide some information voluntarily, subject to it being “within the bounds of what is reasonable under the circumstances.” See September 29, 2010 Prehearing Transcript at 111. This request does not meet that criteria. In this case, subjecting LLB to the type of expansive, burdensome and irrelevant discovery requests that have been propounded by other intervenors whose stated concern is their competitive position would subvert the Commission’s process and will not further the analysis that the Commission is statutorily charged with undertaking. The Commission is fully capable of conducting that assessment through the analysis performed by its own staff and can, where it determines it appropriate, pursue issues identified by any of the intervenors. LBB has worked closely with staff to address its concerns and provide it with information where Staff believed the information would advance the investigation being conducted by the Commission. While the independent power producers have been permitted to intervene, they do not have an independent, due process right to ask for whatever information they want, and obtain it from another intervenor who is also a competitor. See *Re Public Service Company of New Hampshire*. If competitors were permitted to use the regulatory process as a weapon to obtain such information from other competitors, it would have the perverse impact of chilling the development of renewable energy supplies, rather than encouraging it as RSA 362-F intended.”

7. Contrary to the representation of its Counsel, Laidlaw has asserted a blanket objection to the Data Requests of Concord Steam.
8. The primary basis for the blanket objection appears to be Laidlaw's belief that as an Intervenor it is not subject to discovery from another Intervenor who is also a competitor.
9. Pursuant to Puc 203.09 (a), any person granted Intervenor status "shall have the right to conduct discovery in an adjudicated proceeding pursuant to this rule". Moreover, as the Commission recognized during the Prehearing Conference, Laidlaw is different from the typical Intervenor who would not be subject to discovery under the Commission's practice unless it filed testimony. "Laidlaw is the counterparty to the contract that they're asking to be approved" (Transcript, September 29, 2010, Page 111). It was the expectation of the Commission, in permitting the expedited Procedural Schedule, that Laidlaw would not object to Data Requests on such grounds.
10. Concord Steam's Data Requests seek documents and information it believes are relevant to whether this PPA meets the public interest standard as articulated in RSA 362-F:9 (II). They also address its contention, as a regulated utility, that the request in the Petition to approve full cost recovery of the rates, terms and conditions of the PPA, including above-market energy payments that will be applied to the purchase of the Laidlaw facility over a twenty year period, exceeds the statutory authority contained in RSA 362-F:9 and that the Petition if approved, will have catastrophic implications for its ratepayers, the ratepayers of PSNH and for the competitive markets for REC's and wood fuel in New Hampshire, which make the Petition contrary to the public interest.

WHEREFORE, Concord Steam Corporation respectfully moves the Commission

to:

- A. Compel Laidlaw to respond to Concord Steam's Data Requests as set forth herein; and
- B. Grant such other and further relief as justice may require.

Respectfully submitted,

CONCORD STEAM CORPORATION,

By its Attorneys,

UPTON & HATIFIELD, LLP

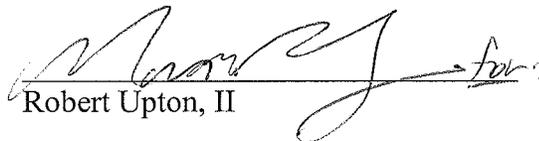
Date: October 29, 2010



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CERTIFICATE OF SERVICE

I hereby certify that on this day, a copy of the foregoing **MOTION TO COMPEL** was forwarded to all counsel or parties of record for discovery in this proceeding by Electronic Mail.



Robert Upton, II

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

In Re: Petition for Approval of Power Prudence Agreement between Public Service
Company of New Hampshire and Laidlaw Berlin BioPower, LLC

DE 10-195

First Set of Data Requests by Concord Steam
Corporation to Laidlaw Berlin BioPower, LLC

NOW COMES the Concord Steam Corporation, by and through its attorneys,
Upton & Hatfield, LLP, and submits the following data requests to Laidlaw Berlin
BioPower, LLC (“Laidlaw”), to be answered in accordance with the Commission’s
procedural rules.

INSTRUCTIONS

1. These data requests and your responses are subject to the laws, rules and regulations of the Public Utilities Commission and the State of New Hampshire, including without limitation, Puc 203.09, which requires that you “shall have a duty to reasonably and promptly amend or supplement the response” upon discovery of additional information or documents that are the subject of these requests.
2. When answering these data requests, furnish all information and documents in your possession or available to you, including that in the possession of your attorneys, investigators, employees, consultants, agents, representatives, guardians, or any other person acting on your behalf, and not merely such information or documents known or held by you personally.

3. If you cannot answer any of the following data requests in full, after exercising due diligence to secure the information to do so, you should so state and answer to the extent possible, specifying your inability to answer the remainder, and identify whatever information or documents are necessary to answer the unanswered portion.
4. If you withhold any documents responsive to these data requests by reason of claim of privilege or otherwise, a list is to be furnished with your written response to these data requests identifying each such document together with the following information:
 - a. The date of the document;
 - b. The name or names of its author, authors or preparers, including the title, employer and address of each;
 - c. The name of each person who has been furnished with the documents, or copy thereof, or who in any way received or viewed the document, or a copy thereof, or who has or has had custody of the document, including the title, employer, and address of each;
 - d. The subject matter of the document; and
 - c. The basis for your assertion of the privilege.
5. For each response, please identify the individual who has provided the response and also the individual who would be responsible for cross-examination concerning each request. Also for each response, identify each individual who supplied any information in response to those questions.
6. Each response should be furnished on a separate page headed by the individual data request being answered.

7. To the extent that your answers to these data requests relate to confidential documents or information, please provide your answer pursuant to a confidentiality agreement or protective order as provided by the Commission's rules including Puc 203.08(h) et seq.

DEFINITIONS

1. "Document" shall be construed in a broad sense and means, without limitation, any writing or recording of any type or description, whether printed or recorded (mechanically or electronically), or reproduced by hand, and whether produced by Plaintiff or Defendant or not including, without limitation, any letters, correspondence, emails, telegrams, memoranda, notes, records, reports, financial statements, statistical and financial records, minutes, memoranda, notices or notes of meetings, telephone or personal conversations or conferences or other communications, envelopes, interoffice, intra-office or intra-company communications, microfilm, microfiche, tape recordings, videotapes, photographs, bulletins, studies, plans, analyses, notices, computer records, runs, programs or software and any codes necessary to comprehend such records, runs, programs or software, books, pamphlets, illustrations, lists, forecasts, brochures, periodicals, charts, graphs, indices, bills, statements, files, agreements, contracts, sub-contracts, completed forms, schedules, work sheets, data compilations, policies, amendments to policies or contracts, training manuals, operator's manuals, user's manuals, calendars, diaries, test results, reports and notebooks, opinions or reports of consultants, and any other written, printed, typed, recorded,

or graphic matter, of any nature, however produced or reproduced, including copies and drafts of such documents, and any and all handwritten notes or notations in whatever form. The term "document" also includes all data or documentation that is stored in a computer or other storage device and can be printed on paper or tape, such as drafts of documents that are stored in a computer or word processor and information that has been input into a computer or other storage device, as well as disks or other materials in which the data or documentation is found.

2. "Communication" includes, without limitation, every manner or means of statement, utterance, notation, disclaimer, transfer or exchange of information of any nature whatsoever, by or to whomever, whether oral or written or whether face-to-face, by telephone, mail, personal delivery or otherwise including, but not limited to, correspondence, conversations, dialogue, discussions, meetings, interviews, consultations, agreements and other understandings.
3. "Person" means individuals and entities, including sole proprietorships, firms, associations, companies, partnerships, joint ventures, corporations, cooperatives, and any other legal, business or governmental entity.
4. Unless otherwise specified, requests for quantitative data are for data as of the date of these Data Requests.
5. "Identify" a communication, record, or document means to list the following information:
 - a. the source(s) or author(s) of the communication, record, or document;
 - b. the recipient(s) of the communication, record, or document;
 - c. the date of the communication, record, or document;
 - d. where the communication, record, or document is located; and

- e. whether the communication, record, or document was made, sent, recorded, or maintained in the ordinary course of business.
6. "Identify" a person means to list the following information:
- a. name;
 - b. title and position (if a natural person);
 - c. business address;
 - d. home address (if a natural person for which no business address is known or available); and
7. As used herein, the terms "refer," or "relate," "referring," "relating," and "relevant" mean, without limitation, referring to, relating to, having any relationship to, pertaining to, evidencing or constituting evidence of, representing, memorializing, summarizing, describing, discussing, analyzing, evaluating, relating to or contradicting directly or indirectly or in whole or in part, the subject matter of the particular request.
8. As used herein, "Laidlaw" shall refer to Laidlaw BioPower, LLC, PJPD Holding, LLC, NEWCO, Cate Street Capital, Aware Energy Funding Capacity, LLC, or any member, shareholder, employee or affiliate or consultant or advisor of any of the foregoing.

DATA REQUESTS

- 1.1 Provide copies of the models or other analyses or studies and all documents utilized or relied upon by Laidlaw in considering whether to enter into the PPA, including but not limited to, models, forecasts and analyses of the electric, capacity, fuel and REC markets.
- 1.2 With reference to Article 7 of the PPA, provide copies of the financial models or other analyses or studies and all documents considered or relied upon by Laidlaw that support the inclusion of the Purchase Option Agreement and Right of First Refusal.

- 1.3 Provide copies of all analyses or studies performed by or on behalf of Laidlaw and all documents relating to the amount of and cost of biomass fuel at the new facility.
- 1.4 Please state why the Purchase Option Agreement and Right of First Refusal are consistent with the restructuring principles of RSA 374-F:3 and provide all documents which support your answer.
- 1.5 Provide all studies or analyses relating to the impact of the PPA on the markets for electricity, capacity, fuel or RECs, or other market impacts for jobs, economic output, gross state product, household earnings and tax revenues.
- 1.6 Provide all documents on which Laidlaw intends to rely to satisfy the factors that must be found by the Commission pursuant to RSA 362-F:9 (II)(a),(b),(c),(d) and (e).
- 1.7 Reference Page 3 lines 22-25 of the Testimony of Terrance J. Large:

Provide data and calculations to support the 750,000 tons the project expects to utilize.
- 1.8 Provide a copy of any management plan prepared by or for Laidlaw for the operation of the new facility.
- 1.9 Reference Page 4 lines 21-23 of the Testimony of Richard C. Labrecque

Why does Laidlaw think that wood pricing will go lower? Provide copies of all documents that support your conclusion.
- 1.10 Reference the PPA page 9, paragraph 6.1.2 (a), (i)

What is the base price and how was it arrived at? Please provide all documents that support your answer.
- 1.11 Provide a copy of the financial model used by Laidlaw to forecast profit and loss from the facility.
- 1.12 Provide copies of all forecasts or estimates and all documents that relate to such forecast or estimates of the price of energy, the price of Class I RECs in New Hampshire, Massachusetts, Rhode Island and Connecticut.

- 1.13 Provide copies of all studies or analyses of the availability or quantity of biomass fuel for the facility and all documents related thereto.
- 1.14 Provide copies of any biomass fuel contracts under which fuel will be provided at the facility.
- 1.15 Have Laidlaw and Berlin agreed to the value of the facility for ad valorem tax purposes or to the methodology to be used by Berlin in assessing its value? If yes please describe the agreement in detail and provide copies of all documents which relate thereto.
- 1.16 Provide copies of all appraisals, valuations, and estimates of value of the facility and all documents in the possession of Laidlaw which relate to the value of the facility.
- 1.17 Provide all documents obtained by Laidlaw from PSNH during the negotiation of the PPA.
- 1.18 Provide all documents provided by or on behalf of Laidlaw to any financial or other institution, entity or person related to the financing of the purchase or construction of the facility

Respectfully submitted,

CONCORD STEAM CORPORATION,

By its Attorneys,

UPTON & HATFIELD, LLP

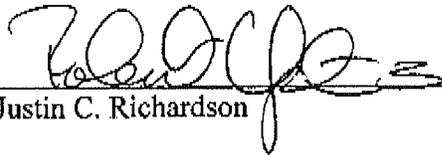


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Date: October 21, 2010

CERTIFICATE OF SERVICE

I hereby certify that on this day, a copy of the foregoing *First Set of Data Requests by Concord Steam Corporation to Public Service Co. of New Hampshire* was forwarded to all counsel or parties of record for discovery in this proceeding by Electronic Mail.


Justin C. Richardson