

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

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

DE 10-195

CONCORD STEAM CORPORATION'S MOTION TO COMPEL

NOW COMES the Concord Steam Corporation and moves to compel PSNH to respond its data requests pursuant to Rule Puc 203.09 and in support of this motion states as follows:

1. On October 14, 2010, Concord Steam submitted data requests to PSNH.
2. On October 22, 2010, PSNH responded to Concord Steam's data requests.

PSNH's responses to Concord Steam Data Requests 1, 2, 3, 5, 6, 9 and 28 are attached as Exhibit A.

3. As shown in Exhibit A, PSNH did not object to Concord Steam's data requests 1, 2, 3, 6 and 28. Nearly all of PSNH's responses refer to its responses to Staff, stating "See response to STAFF-01, Q-STAFF-011 and -032."

4. PSNH did not object to Staff data requests Q-STAFF-011 and -032. As a result, there is no pending objection to Concord Steam's data requests 1, 2, 3, 6 and 28.

5. Commission rule Puc 203.09 provides that: "Failure to object to a data request or requests for documents within [the date specified by the Commission] without good cause *shall be deemed a waiver of the right to object.*" (emphasis added). The date for objections under the accelerated schedule requested by PSNH and Laidlaw has lapsed. PSNH has therefore waived its right to object to Concord Steam's data requests.

6. PSNH has not provided responses to Concord Steam's data requests 1, 2, 3, 6, and 28. These requests are clearly relevant and necessary to the criteria set forth in RSA 362-F:9 and therefore the proper subjects of data requests and a motion to compel.

7. Concord Steam is willing to consider receiving its responses pursuant to a reasonable confidentiality agreement, such as one based on the FERC's model protective order. See Exhibit B. However, PSNH has waived its right to object to the data requests and because this information is directly relevant, Concord Steam moves to compel a response pursuant to Puc 203.09.

8. PSNH did object to Concord Steam data requests 5 and 9. Request 5 related to "the cost of biomass fuel at Schiller Station". This request is directly relevant as it is used to determine price of energy under the PPA proposed by PSNH. It is not overbroad or unduly burdensome. Disclosure of this information is therefore necessary to participate in this proceeding.

9. Request 9 relates to documents "PSNH intends to rely to satisfy the factors that must be found by the Commission pursuant to RSA 362-F:9". This request is on-going in nature under Puc 203.09 and requires that PSNH timely provide any documents that PSNH intends to submit in this proceeding.

10. Concord Steam has made a good faith effort to resolve this matter by offering to receive responses under a confidentiality agreement that would avoid any competitive harm to PSNH. However, PSNH has refused to provide the requested information. Exhibit B.

WHEREFORE Concord Steam respectfully requests that the Commission:

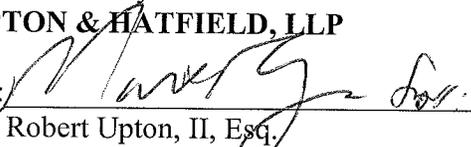
- A. Grant this Motion to Compel;
- B. Order PSNH to respond to Concord Steam's requests
- B. Grant such other relief as justice may require.

Respectfully submitted,

CONCORD STEAM CORPORATION
By Its Attorneys
UPTON & HATFIELD, LLP

Date: October 29, 2006

By:


Robert Upton, II, Esq.
23 Seavey St., P.O. Box 2242
North Conway, NH 03860
(603) 356-3332

Justin C. Richardson, Esq.
159 Middle Street
Portsmouth, NH 03801
(603) 436-7046

CERTIFICATION

I hereby certify that a copy of the foregoing was this day forwarded to all persons on the Commission's official service list in the above proceedings.

Date: October 29, 2010

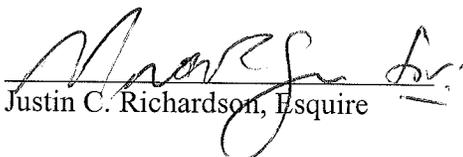

Justin C. Richardson, Esquire

EXHIBIT A CONCORD STEAM

Public Service Company of New
Hampshire
Docket No. DE 10-195

Data Request CSC-01

Dated: 10/14/2010
Q-CSC-001
Page 1 of 1

Witness: Terrance J. Large
Request from: Concord Steam Corporation

Question:

With reference to the Testimony of Gary Long at page 4, lines 9-29, provide copies of the models or other analyses utilized or relied upon by PSNH in considering whether to enter into a long term power purchase agreement.

Response:

See response to STAFF-01, Q-STAFF-011 and -032.

Q 0-11
no attachment provided

Q 0-32
no attachment provided

EXHIBIT A CONCORD STEAM

Public Service Company of New
Hampshire
Docket No. DE 10-195

Data Request CSC-01

Dated: 10/14/2010
Q-CSC-002
Page 1 of 1

Witness: Terrance J. Large
Request from: Concord Steam Corporation

Question:

With reference to such testimony, provide copies of the models or other analyses or studies utilized or relied upon by PSNH in considering whether to enter into the PPA, including but not limited to, models or analyses of the electric, capacity and fuel markets.

Response:

See response to STAFF-01, Q-STAFF-003 thru -008 and -011 and -15.

11 - no attachments

15 - no spreadsheet - IRR

EXHIBIT A CONCORD STEAM

**Public Service Company of New
Hampshire
Docket No. DE 10-195**

Data Request CSC-01

**Dated: 10/14/2010
Q-CSC-003
Page 1 of 1**

**Witness: Terrance J. Large
Request from: Concord Steam Corporation**

Question:

With reference to Article 7 of the PPA, provide copies of the financial models or other analyses or studies considered or relied upon by PSNH that support the inclusion of the Purchase Option Agreement and Right of First Refusal.

Response:

See response to STAFF-01, Q-STAFF-011.

11 - no attachments

EXHIBIT A CONCORD STEAM

Public Service Company of New
Hampshire
Docket No. DE 10-195

Data Request CSC-01

Dated: 10/14/2010
Q-CSC-005
Page 1 of 1

Witness: Terrance J. Large
Request from: Concord Steam Corporation

Question:
Provide copies of all analyses or studies performed by or on behalf of PSNH relating to the cost of biomass fuel at Schiller Station.

Response:
PSNH objects to this question as it is overly broad and unduly burdensome. PSNH further objects to this question as the documents requested would not provide or lead to relevant or admissible evidence. Moreover, most if not all of any responsive documents would be confidential and not provided to competitors under Rule Puc 203.08.

Will not be submitted

EXHIBIT A CONCORD STEAM

**Public Service Company of New
Hampshire
Docket No. DE 10-195**

Data Request CSC-01

**Dated: 10/14/2010
Q-CSC-006
Page 1 of 1**

**Witness: Terrance J. Large
Request from: Concord Steam Corporation**

Question:

Provide copies of all analyses or studies performed by or on behalf of PSNH that relate to or consider the impact on the default service charge by the following:

- a. PPA in its entirety;
- b. Energy Base Price;
- c. Wood Price Adjustment;
- d. Purchase Option Agreement; and
- e. Right of First Refusal.

Response:

See response to STAFF-01, Q-STAFF-011.

11 - no attachments

EXHIBIT A CONCORD STEAM

**Public Service Company of New
Hampshire
Docket No. DE 10-195**

Data Request CSC-01

**Dated: 10/14/2010
Q-CSC-009
Page 1 of 1**

**Witness: Terrance J. Large
Request from: Concord Steam Corporation**

Question:

Provide all documents on which PSNH 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).

Response:

PSNH objects to this question as it requires speculation, is vague, is overly broad. Until the record in this proceeding is finalized, PSNH cannot determine the universe of "all documents" which may be responsive.

Notwithstanding this objection, PSNH responds as follows:

See the testimony of Mr. Large (pages 7 - 15), the testimony of Dr. Shapiro and the response to CSC-01, Q-CSC-008..

Continuing obligation

EXHIBIT A CONCORD STEAM

**Public Service Company of New
Hampshire
Docket No. DE 10-195**

Data Request CSC-01

**Dated: 10/14/2010
Q-CSC-028
Page 1 of 1**

**Witness: Terrance J. Large
Request from: Concord Steam Corporation**

Question:
Provide a copy of the financial model used to forecast profit and loss from the facility.

Response:
See response to STAFF-01, Q-STAFF-011 and -015.

11 - no attachments
15 - no spreadsheet

EXHIBIT A CONCORD STEAM

**Public Service Company of New
Hampshire
Docket No. DE 10-195**

Data Request STAFF-01

Dated: 10/08/2010

Q-STAFF-011

Page 1 of 39

Witness: Terrance J. Large
Request from: New Hampshire Public Utilities Commission Staff

Question:

Please describe all quantitative assessments or analyses performed by or for PSNH to determine whether the terms of the proposed PPA are in the public interest. Provide all calculations, workpapers, and supporting documentation.

Response:

Pursuant to Rule Puc 203.08(d), PSNH has a good faith basis for seeking confidential treatment of the attachments to this response, and, intends to submit a motion for confidential treatment regarding such documents at or before the commencement of the hearing in this proceeding.

PSNH notes that not all elements of the "public interest" are quantifiable. The attached (below) are a set of documents related to the economics of the contract, which is only one aspect that should be considered in determining if the public interest standard has been met. In addition to the information contained in the following attachments, the direct testimony of Dr. Lisa Shapiro should also be considered as responsive to this question.

The attachments are described below.

Attachment 1 compares the total costs of the PPA (under three capacity factor scenarios) to an estimate of the avoided market costs (under a single scenario) and computes the incremental impact on the Default Energy Service rate in 2014.

Attachment 2 is a table and chart that compares the prices under the PPA to three market price scenarios (base, low, high).

Attachment 3 is an analysis of the economics of the PPA and the PSNH Purchase Option given a "Base Case" forecast for energy, capacity and RECs.

Attachment 4 is a repeat of the Base Case analysis given a "Low Energy" market scenario (energy market prices escalate at 0.5% in Years 18 - 40 vs. the Base Case 2.5% escalator).

Attachment 5 is a repeat of the Base Case analysis given a "Low REC" market scenario (REC market is 10% of ACP in Years 21 - 40 vs. 50% in the Base Case).

Attachment 6 is a repeat of the Base Case analysis given a "Low Wood" fuel price scenario (wood prices escalate at 0.5% during Years 1 - 40 vs. the Base Case 2.5% escalator).

Attachment 7 is a repeat of the Base Case analysis with a revised assumption about the Laidlaw lease payments (\$17 million per year during Years 1 -20 vs. \$20 million per year in the Base Case).

EXHIBIT A CONCORD STEAM

**Public Service Company of New
Hampshire**
Docket No. DE 10-195

Data Request STAFF-01

Dated: 10/08/2010

Q-STAFF-032

Page 1 of 9

Witness: Richard C. Labrecque
Request from: New Hampshire Public Utilities Commission Staff

Question:

Ref. Labrecque Testimony, page 3. Regarding NH RSA Chapter 362-F, identify all other long-term renewable resource options that PSNH considered for meeting its New Hampshire Class I REC obligations. Provide all evaluations, studies, reports, spreadsheets, correspondence, notes, presentation materials, and work papers related to these renewable resource options.

Response:

Pursuant to Rule Puc 203.08(d), PSNH has a good faith basis for seeking confidential treatment of the attachments to this response, and, intends to submit a motion for confidential treatment regarding such documents at or before the commencement of the hearing in this proceeding.

As is more fully detailed in Docket DE 09-067, PSNH received proposals from both Clean Power Development, LLC and Concord Steam Corporation in July 2009, several months after negotiations with Laidlaw were in progress. These proposals are attached to the response to Q-STAFF-017.

Attachment 1 to this response is a comparison of the two proposals (CPD, CSC) to the Laidlaw PPA using the forward market prices provided in response to Q-STAFF-003.
Attachment 2 is an additional comparison of the three proposals.

EXHIBIT B - CONCORD STEAM

Justin C. Richardson

From: bersara@nu.com
Sent: Friday, October 29, 2010 2:25 PM
To: Justin C. Richardson
Cc: Robert Upton II
Subject: Re: Concord Steam Data Requests

Justin:

As discussed during the prehearing conference in Docket DE 10-195, the entire need for confidential treatment of certain confidential, commercial, or financial information is to ensure that such information is not available to competitors. PSNH does not understand how the execution of a confidentiality agreement with such a competitor (Concord Steam) would effectuate that need.

Therefore, PSNH is not able to resolve this matter in the manner you have proposed.

BOB
ROBERT A. BERSAK
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603-634-3355
Fax 603-634-2438

From: "Justin C. Richardson" <jrichardson@upton-hatfield.com>
To: Robert A. Bersak/NUS@NU
Cc: "Justin C. Richardson" <jrichardson@upton-hatfield.com>, Robert Upton II <rupton@upton-hatfield.com>
Date: 10/29/2010 11:15 AM
Subject: Concord Steam Data Requests

Attorney Bersack:

Please let me know whether PSNH will provide Concord Steam the Confidential documents provided to Staff pursuant to a suitable confidentiality agreement as customarily used by the PUC or FERC. I've used the FERC model protective order as a starting point in other cases and it provides adequate protection for both confidential information as well as designations for information that is competitive, i.e. not disclosable to competitors even if they signed a confidentiality agreement.

We intend to move to compel disclosure today. However, if you are willing to discuss a suitable confidentiality agreement I will so indicate in our motion and perhaps we can resolve this without need for a ruling by the Commission. The Commission rules require a good faith effort to resolve discovery disputes and this request is made in that regard. If you do not wish to proceed along those lines, please let me know and I will indicate that we were unable to resolve this by agreement.

10/29/2010

EXHIBIT B - CONCORD STEAM

Regards,

Justin Richardson

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