

STATE OF NEW HAMPSHIRE  
BEFORE THE  
PUBLIC UTILITIES COMMISSION

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

DE 10-195

CONCORD STEAM CORPORATION'S MOTION  
TO DISMISS OR TO SUMMARILY DENY

NOW COMES the Concord Steam Corporation, by and through its attorneys, Upton & Hatfield, LLP, and moves to dismiss or summarily deny the application of Public Service Company of New Hampshire, and, in support thereof, states as follows:

**I. SUMMARY**

1. Public Service Company of New Hampshire (“PSNH”) petitions for approval of its Power Purchase Agreement (“PPA”) with Laidlaw Berlin BioPower, LLC (“Laidlaw”) “[u]nder the provisions of RSA 362-F:9”. *Petition for Approval of Power Purchase Agreement*, Page 1. PSNH does not seek approval of the PPA under any other statutory authority and no other statutory authority is cited for approval of its Petition.

2. PSNH’s Petition asks the Commission to approve “full cost recovery of the rates, terms and conditions of the PPA”<sup>1</sup> which includes above-market “Cumulative Reduction” payments that will be applied to the purchase price of Laidlaw’s facility over a twenty year period.

3. PSNH’s Petition and its proposed PPA will have significant adverse impacts on its customers, on the development of competitive markets for RECs, and on the market for wood fuel in New Hampshire which make its Petition contrary to the public interest. However, there is no need for the Commission to make any public

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<sup>1</sup> *Petition for Approval of Power Purchase Agreement*, Page 2.

interest determination in this case as RSA 362-F:9 only allows PSNH to “enter into multi-year purchase agreements with renewable energy sources for certificates, in conjunction with or independent of purchased power agreements from such sources, to meet reasonably projected renewable portfolio requirements and default service needs”.

4. RSA 362-F:9 does not allow PSNH to obtain “pre-approval” for cost recovery. Nor does RSA 362-F:9 provide PSNH the authority to make payments toward the purchase price of the State’s largest wood-fired generating station. PSNH cites no legal authority in support of its request for approval of cost recovery and purchase payments and none exists. As a result, the Commission should summarily deny or dismiss PSNH’s petition.

## **II. FACTUAL BACKGROUND**

5. PSNH’s proposed PPA with the 70 MW Laidlaw generating station will create the largest wood fired generating station in New Hampshire. It exceeds the capacity of PSNH’s existing 50 MW Schiller Station, currently the largest in New Hampshire. By comparison, the next largest wood fired generating station, Pinetree Power, is only 20 MW.

6. If the PPA is approved, the fingers of PSNH’s monopoly as the default service provider will extend their grasp to control New Hampshire’s two largest wood-fired generating stations and 120 MW of its 217.5 MW of biomass generating capacity.<sup>2</sup> PSNH’s dominion over both Schiller and Laidlaw will give it undue control over half of

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<sup>2</sup> In comparison to Laidlaw’s proposed 70 MW generating station and PSNH’s Schiller Station (50 MW), the remainder of New Hampshire’s wood fired generators are smaller and more consistent with sustainable use of New Hampshire’s forests and include: Bridgewater (16.5 MW); Hemphill (15 MW); Whitefield (16 MW); Alexandria (15 MW); Bethlehem (15 MW); and Tamworth (20 MW). Concord Steam (2 MW) operates on a seasonal basis when demand for its steam is reduced.

the market for wood fuel. There will no longer be a market by which the reasonableness of PSNH's fuel purchases may be measured.

7. The PPA calls for PSNH to purchase all of the energy, capacity, and Renewable Energy Certificates ("RECs") from Laidlaw. *PPA Section 5.1; Testimony of Gary Long, Page 27*. The PPA requires that all of the costs under the PPA be passed directly to its customers. *PPA Section 4.1.2; Testimony of Gary Long, Page 27* ("full cost recovery of the rates, terms and conditions of this Agreement" required as a condition precedent.).

8. The energy price to be paid by PSNH's customers, even were it not hidden as confidential, is matter of speculation. Rather than pay a price reasonably based on markets for energy, PSNH's customers will be required to pay an Adjusted Base Price that reflects: (a) a confidential Base Price for energy; and (b) a confidential "Wood Price Adjustment" (WPA) in which the "the actual average \$/ton Biomass Fuel cost that PSNH paid for Biomass Fuel at its Schiller station facility" is reduced by another confidential number and multiplied by yet another confidential factor. *PPA Section 6.1.2 (a)(ii); Testimony of Gary Long, Page 28*. PSNH seeks to recover its Adjusted Energy Price from its customers for the 20 year term of the PPA, yet refuses to make the terms of the PPA available to the public.

9. The PPA provides PSNH the option to purchase the Laidlaw facility. *PPA Appendix B; Testimony of Gary Long, Page 52 et seq.* The purchase price is not specified but is based on the "fair market value" to be determined at a later date. Despite not knowing the purchase price, PSNH's customers are required to make payments toward the final purchase. Section 6.1.3 of the PPA, entitled *Reduction of Facility Purchase*

*Price for Over-Market Energy Payments*, “adjusts” the purchase price for the Laidlaw facility by the amount that the PPA requires PSNH to pay above market prices for energy. *PPA Section 6.1.3; Testimony of Gary Long*, Page 30. However, the option may not be exercised until “the day after the 20th anniversary date of the designated “In-Service Date” under the PPA. *Purchase Option Agreement, Section 2(a)*.

10. It is important to note that energy is only one of three products that PSNH’s customers will be required to purchase from the Laidlaw facility. In the event PSNH’s customers are required to pay above market prices for energy, capacity or RECs, their only recourse will be to wait 20 years to purchase the facility for an undetermined “fair market value”. However, it appears the Cumulative Reduction payments are based on nominal dollars and any value PSNH’s customers receive will come 20 years too late if it comes at all. Even more troubling, the PPA allows PSNH to transfers its rights under its option to purchase to any third-party, in which case PSNH’s customers will receive no benefit at all.

### **III. MOTION TO DISMISS OR TO SUMMARILY DENY**

11. As set forth herein, PSNH asks for approval of the PPA “[u]nder the provisions of RSA 362-F:9”. *Petition for Approval of Power Purchase Agreement*, Page 1. PSNH cites to no other statutory or other authority for approval of the PPA, its request for cost recovery, or its proposed Cumulative Reduction payments to be applied to the purchase price of the facility.

13. RSA 362-F:9, the sole statutory authority relied on by PSNH, states as follows:

**362-F:9 Purchased Power Agreements. –**

I. Upon the request of one or more electric distribution companies and after notice and hearing, the commission may authorize such company or companies to enter into multi-year purchase agreements with renewable energy sources for certificates, in conjunction with or independent of purchased power agreements from such sources, to meet reasonably projected renewable portfolio requirements and default service needs to the extent of such requirements, if it finds such agreements or such an approach, as may be conditioned by the commission, to be in the public interest.

II. In determining the public interest, the commission shall find that the proposal is, on balance, substantially consistent with the following factors:

- (a) The efficient and cost-effective realization of the purposes and goals of this chapter;
- (b) The restructuring policy principles of RSA 374-F:3;
- (c) The extent to which such multi-year procurements are likely to create a reasonable mix of resources, in combination with the company's overall energy and capacity portfolio, in light of the energy policy set forth in RSA 378:37 and either the distribution company's integrated least cost resource plan pursuant to RSA 378:37-41, if applicable, or a portfolio management strategy for default service procurement that balances potential benefits and risks to default service customers;
- (d) The extent to which such procurement is conducted in a manner that is administratively efficient and promotes market-driven competitive innovations and solutions; and
- (e) Economic development and environmental benefits for New Hampshire.

14. By statute, PSNH's authority to "enter into multi-year purchase agreements with renewable energy sources for certificates" is limited to purchase of certificates and the "reasonably projected renewable portfolio requirements and default service needs to the extent of such requirements". RSA 362-F:9, I.

15. RSA 362-F:9 is not a vehicle to bypass the principles of electric restructuring in New Hampshire. In fact, the Legislature intended that the free market principles of electric restructuring would be applied to such multi-year contracts. For example, RSA 362-F:9, II (b) requires that the Commission find that any multi-year agreement be substantially consistent with the "restructuring policy principles of RSA 374-F:3". There is absolutely no statutory basis for PSNH to use RSA 362-F:9 to expand its portfolio of generating stations and hinder the development of "fully competitive and innovative markets". RSA 374-F:3, II. Nor does RSA 362-F:9 allow PSNH to ignore the bedrock principle of unbundling generation of electric services contained in RSA 374-F:3, III ("Generation services should be *subject to market competition* ... and at least functionally separated from transmission and distribution services") (emphasis added). PSNH's Petition and the PPA itself are written as if electric restructuring never occurred.

16. RSA 362-F:9, II (a) requires that any multi-year contracts "for certificates" promote the "realization of the purposes and goals of [RSA 362-F]." The first of these purposes is the provision of "fuel diversity to the state". RSA 362-F:1. A single contract to meet all of its REC requirements, to the exclusion of all others, undermines fuel diversity as the Commission has already observed.<sup>3</sup>

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<sup>3</sup> This Commission's recent order noted in the Testimony of Gary Long, Page 16, that "PSNH's interest in entering into additional long term power purchase agreements is highly limited".

17. It is clear that the evidence PSNH has presented in this case directly conflicts with the principles of electric restructuring. However, it is unnecessary for the Commission to consider any of the evidence in this case because PSNH is asking the Commission to approve aspects of the PPA that exceed the scope of RSA 362-F:9. PSNH's Petition is not, simply put, a multi-year contract "for certificates" or for "default service" as allowed by RSA 362-F:9. It is a PPA that requires pre-approval of its cost recovery provisions and Cumulative Reduction payments toward an unknown purchase price of a generating facility over a 20 year period. No legal authority has been cited for approval of cost recovery or payments toward the purchase of the Laidlaw facility PSNH. None exists. The Commission should therefore summarily deny approval and dismiss PSNH's Petition.

WHEREFORE Concord Steam respectfully requests that the Commission:

- A. Dismiss PSNH's Petition for Approval of the PPA;
- B. Summarily Deny Pre-Approval of Cost Recovery;
- C. Summarily Deny Approval of the Purchase Option Agreement and recovery of any portion of energy payments made pursuant to such option; and
- D. Grant such other relief as justice may require.

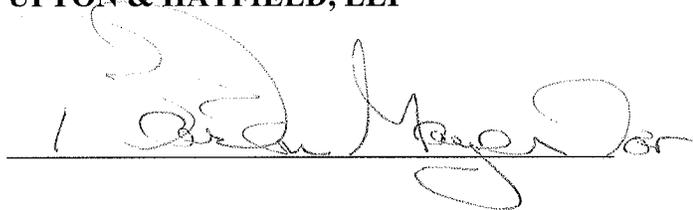
Respectfully submitted,

**CONCORD STEAM CORPORATION,**

By its Attorneys,

**UPTON & HATFIELD, LLP**

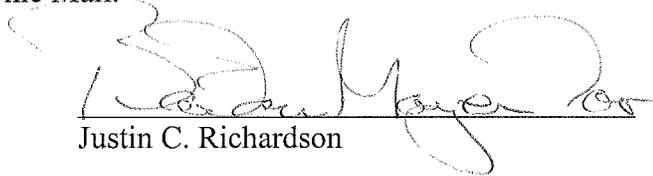
Date: <sup>November</sup> ~~October~~ 2, 2010



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**CERTIFICATE OF SERVICE**

I hereby certify that on this day, a copy of the foregoing *Motion to Dismiss of Concord Steam Corporation* was forwarded to all counsel or parties of record for discovery in this proceeding by Electronic Mail.



Justin C. Richardson