

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

Objection
of
Public Service Company of New Hampshire
to
Wood-Fired IPPs'
Objection to Notice of Withdrawal and Motion to Compel Participation

November 5, 2010

Pursuant to N.H. Code Admin. Rules Puc § 203.07(e), Public Service Company of New Hampshire ("PSNH" or the "Company") hereby objects to the Wood-Fired IPPs' "Objection of Notice of Withdrawal and Motion to Compel Participation" dated November 2, 2010.

In support of this Objection, PSNH states as follows:

1. On October 28, 2010, Laidlaw Berlin BioPower, LLC ("LBB") filed notice of its withdrawal from this proceeding. The only mandatory party in this proceeding is PSNH, the Petitioner. LBB, like all other intervenors in this proceeding, was a voluntary participant. There is no statutory or regulatory requirement that compelled its involvement.

2. The Wood-Fired IPPs now object to LBB's withdrawal and demand that the Commission compel LBB's participation. In so doing, the Wood-Fired IPPs point to no

statutory, regulatory or case law authority to support the extraordinary argument that a party who voluntarily participates in an administrative proceeding in New Hampshire can be compelled to continue that participation. In fact, no such authority exists.

3. PSNH believes the Wood-Fired IPPs' pleading is improper and cannot be granted as a matter of law. LBB's intervention was voluntary. LBB did not seek permission to withdraw, but withdrew as a matter of right. The Wood Fired IPPs have pointed to no authority confirming their ability to object in such a circumstance

4. Rather than rely on any law to support their strained argument, the Wood-Fired IPPs claim that some form of implied covenant arose when the Commission set the expedited procedural schedule for this proceeding. The Wood-Fired IPPs liken that schedule to some type of consideration binding LBB to not only participate as a full party intervenor, but to also subject itself to a raft of inappropriate and burdensome discovery requests in a manner different than that of every other intervenor in this proceeding.. This argument is just plain wrong.

5. During the prehearing conference in this proceeding, the need for an accelerated schedule was driven primarily to benefit the citizens of Berlin. Such benefits include near-term creation of jobs, the addition of taxable properties within the City of Berlin, and the availability of New Market Tax Credits ("NMTC") that would enure to the City. The NMTC benefits were described as contractual agreements with community development entities to establish a \$2.2 million cash fund that would capitalize a small and medium enterprise local revolving loan fund to provide needed access to capital to a variety of local businesses.

6. LBB never linked its advocacy for a particular schedule to a willingness to grant its competitors unfettered discovery and access to its confidential documents. Similarly, nowhere did the Commission ever link such a one-sided discovery obligation on LBB as a *quid pro quo* for the procedural schedule that was adopted. In fact, the Commission explicitly reserved decisions about the scope of discovery for a later time, stating its expectation that such discovery should be “within the bounds of what is reasonable under the circumstances” (*see* September 29, 2010 Prehearing Transcript at 111) and highly encouraging the other intervenors to work together and consolidate their discovery efforts (*id.* at 113).

7. The Wood-Fired IPPs demand that the Commission treat one intervenor in a manner significantly different from how they insist they be treated. The Wood-Fired IPPs want to be voluntary participants here who are immune from discovery. Yet they insist LLB, another voluntary participant, be compelled to remain in the case and be subjected to massive amounts of irrelevant, inappropriate discovery, including the provision of LBB’s confidential documents to competitors.

8. Recently, in another Commission proceeding seeking approval of a renewable portfolio standard PPA under RSA 362-F:9, a full-party intervenor similarly withdrew from the proceeding. In Docket No. DE 08-077 where the Commission reviewed the PPA between PSNH and Lempster Wind, LLC, Constellation NewEnergy, Inc. and Constellation Commodities Energy Group, Inc. (collectively “Constellation”) notified the Commission of the decision to withdraw from the proceeding. (*See* letter dated January 23, 2008.) In the withdrawal letter, Constellation stated, “To the extent that Constellation requires the Commission’s approval to withdraw, it hereby requests such approval.” The Commission never deemed it necessary to

provide such approval - - Constellation's withdrawal was merely noted matter-of-factly in that docket's "Order Granting Petition." (Order No. 24,965 dated May 1, 2009, *slip op.* at 3).

9. If the Commission deems it necessary and proper to deviate from that recent past practice and involuntarily compel LLB to participate in this proceeding, such participation should be on the same basis and with the same requirements and responsibilities as other intervenors. That is, if LLB is ordered to participate, to respond to discovery requests and to disgorge its confidential information as part of that process, then, pursuant to Rule Puc 203.09(b), all other intervenors in this proceeding should be subject to the same rights and responsibilities, without the option to withdraw at a later date.

10. The Wood-Fired IPPs' "Objection of Notice of Withdrawal and Motion to Compel Participation" is yet another example of the conduct of the competitor-intervenors in this proceeding which is undoubtedly aimed toward impairing the interests of justice and the orderly and prompt conduct of the proceeding. The Commission should *sua sponte* determine whether continued intervenor status is warranted for the competitor intervenors, including the Wood-Fired IPPs, or whether the imposition of conditions to such intervenor status are warranted pursuant to RSA 541-a:32,III.

WHEREFORE, PSNH objects to the Wood-Fired IPPs "Objection of Notice of Withdrawal and Motion to Compel Participation."

For the reasons expressed herein, PSNH respectfully requests that the Commission:

- A. deny the Wood-Fired IPPs "Objection of Notice of Withdrawal and Motion to Compel Participation;"

- B. consider necessary and appropriate conditions upon the Wood-Fired IPPs participation in the proceedings as permitted by RSA 541-A:32,III; and
- C. grant such other and further relief as justice may require.

Respectfully submitted this 5th day of November, 2010.

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

By:  _____

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CERTIFICATE OF SERVICE

I hereby certify that on November 5, 2010, I served an electronic copy of this filing with each person identified on the Commission's service list for this docket pursuant to Rule Puc 203.02(a).



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